TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 234.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, APPELLANTS,

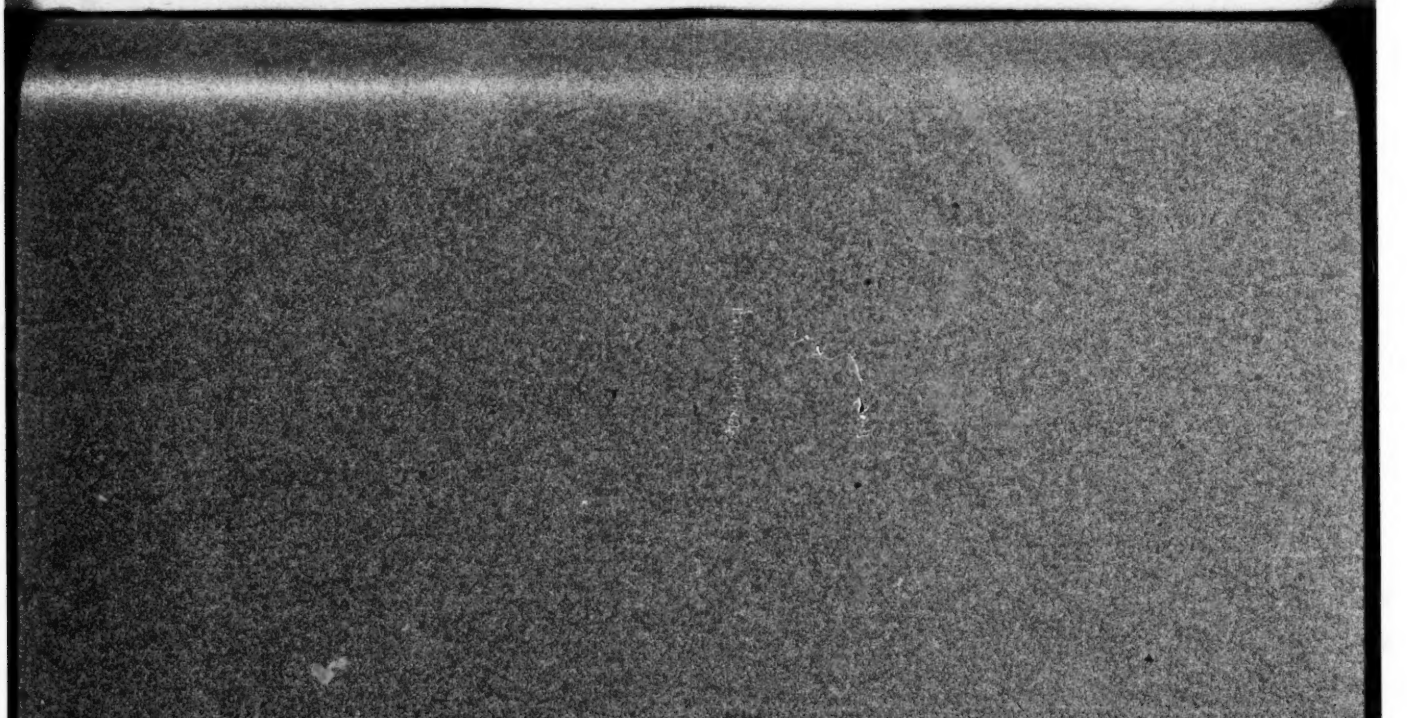
vs.

F. GORDON DEXTER AND OLIVER AMES, SECOND, TRUSTEES, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED MARCH 13, 1899.

(17,327.)



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Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1898, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, to wit, the fifth day of December, A. D. 1898, before the Honorable Henry C. Caldwell and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the ninth day of September, A. D. 1897, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Nebraska, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

Pleas before the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the eighth judicial circuit, sitting in the circuit court of the United States for the district of Nebraska, within the said eighth judicial circuit, at the term of May, A. D. 1897.

Be it remembered that on the 21st day of Jan'y, 1895, bill of complaint was filed in the clerk's office of said circuit court, in the case of F. Gordon Dexter *et al. vs.* The Union Pacific Railway Company *et al.*, which said bill is in the words and figures following, to wit:

Bill for Foreclosure of First Mortgage Union Pacific Railroad Co.

In the United States Circuit Court for the District of Nebraska.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,

vs.

THE UNION PACIFIC RAILWAY COMPANY, THE UNITED STATES OF America, The Union Trust Company of New York; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company; The Union Pacific, Lincoln & Colorado Railway Company; The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company; The Chicago, St. Paul, Minneapolis & Omaha Railway Company; The Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, Copartners, under the Firm Name and Style of F. H. Peavy & Company; The Union Pacific, Denver & Gulf Railway Company; The Chicago, Milwaukee & St. Paul Railway Company; The Salina & Southwestern Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Kansas & Nebraska Railway Company; The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Defendants.

Bill of complaint.

Winslow S. Pierce, 195 Broadway, New York city; R. S. Hall, Omaha, Neb., solicitors and of counsel for complainants.

2 To the honorable the judges of the circuit court of the United States for the district of Nebraska, in the eighth circuit, sitting in equity:

F. Gordon Dexter and Oliver Ames, Second, citizens and residents of the State of Massachusetts, bring this their bill of complaint against the Union Pacific Railway Company, a corporation organized and existing under the laws of the United States of America; the United States of America; the Union Trust Company of New York, a corporation organized and existing under the laws of the State of New York; J. Pierpont Morgan, a citizen and resident of the State of New York, and Edwin F. Atkins, a citizen and resident of the State of Massachusetts, trustees; the Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York, trustee; the Central Pacific Railroad Company, a corporation organized and existing under the laws of

the State of California; the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky; the St. Joseph & Grand Island Railroad Company, a corporation organized and existing under the laws of the State of Kansas; the Kansas City & Omaha Railroad Company, a corporation organized and existing under the laws of the State of Nebraska; the Oregon Railway & Navigation Company, a corporation organized and existing under the laws of the State of Oregon; the Oregon Short Line & Utah Northern Railway Company, a consolidated corporation, organized and existing under the laws of the States of Wyoming, Idaho, Oregon, Montana and the Territory of Utah; the Union Pacific, Lincoln & Colorado Railway Company, a consolidated corporation, organized and existing under the laws of the State of Kansas; the Chicago & Northwestern Railway Company, a corporation organized and existing under the laws of the State of Wisconsin; the Omaha & Republican Valley Railway Company, a corporation organized and existing under the laws of the State of Nebraska; the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized and existing under the laws of the State of Wisconsin; the Kearney & Black Hills Railway Company, a corporation organized and existing under the laws of the State of Nebraska; Frank H. Peavy, E. C. Michener and Charles T. Peavey, copartners under the firm name and style of F. H. Peavy & Company, and citizens and residents of the State of Minnesota; the Union Pacific, Denver & Gulf Railway Company, a consolidated corporation, organized and existing under the laws of the States of Colorado and Wyoming; the Chicago, Milwaukee & St. Paul Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, and a domestic corporation of the State of Ne-
3 braska; the Salina & Southwestern Railway Company, a corporation organized and existing under the laws of the State of Kansas; the Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under the laws of the States of Illinois and Iowa; the Chicago, Kansas & Nebraska Railway Company, a corporation organized and existing under the laws of the States of Kansas and Colorado; the Missouri Pacific Railway Company, a corporation organized and existing under the laws of the State of Missouri, and S. H. H. Clark, a citizen and resident of the State of Missouri; Oliver W. Mink, a citizen and resident of the State of Massachusetts; E. Ellery Anderson and Frederick R. Coudert, citizens and residents of the State of New York, and John W. Doane, a citizen and resident of the State of Illinois.

And thereupon humbly complaining, your orators show unto your honors as follows:

First. That your orators F. Gorden Dexter and Oliver Ames Second, are citizens and residents of the State of Massachusetts.

That the defendant The Union Pacific Railway Company is a corporation created by and existing under certain laws of the United States, to wit: An act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean and to secure to the Government the use of the

same for postal, military and other purposes," approved July 1st, 1862; also an act of Congress amendatory thereof, approved July 2d, 1864, and other acts of the Congress of the United States, amendatory thereof and supplemental thereto. That the said Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States, by the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, each of said three companies being named and described in the congressional legislation embraced in said acts; and the said Union Pacific Railway Company, so created by consolidation as aforesaid, thereupon became successor to each and all of the said constituent companies, and thereby became vested with all the rights, titles, interests, properties and franchises of each and all of said constituent companies. That the said Union Pacific Railway Company has and maintains its general office and principal place of business in the city of Omaha, in the State and district of Nebraska. Your orators pray leave to refer to each and every act of Congress of the United States which are hereinbefore and hereinafter mentioned with the same
4 force and effect as if said acts were herein set out at length.

That the said defendant The Union Pacific Railway Company owns a line of railway extending from Council Bluffs in the State of Iowa, westerly through the States of Nebraska and Wyoming into the Territory of Utah to a point about five miles west of Ogden, and a connection with the Central Pacific railroad mentioned in said acts of Congress, a distance of about 1,042.93 miles; and also a line of railway extending from Kansas City in the State of Missouri, westerly through the State of Kansas and into the State of Colorado to Denver, a distance of about 639 miles; and also a line of railway extending from Denver in the State of Colorado, in a northerly direction to Cheyenne in the State of Wyoming, a distance of about 106 miles, together with certain terminal extensions and spur tracks and branches used in connection therewith, making a total mileage of 1,829 miles or thereabouts owned by said Union Pacific Railway Company.

Second. That the Union Pacific Railroad Company (the mortgagor in the first mortgage of November 1st, 1865, of which your orators are successor trustees, which is hereinafter more fully referred to) was duly incorporated and organized under and by virtue of said acts of the Congress of the United States of July 1st, 1862, and of July 2d, 1864, and the other acts of Congress of the United States amendatory thereof and supplemental thereto, which are hereinbefore referred to.

That in and by said act of Congress of July 1st, 1862, the said Union Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph with the appurtenances commencing at a point on the one hundredth meridian of longitude west of Greenwich, between the south margin of the valley of the Republican

river and the north margin of the valley of the Platte river, in the Territory of Nebraska, at a point to be fixed by the President of the United States after actual surveys; thence running westerly upon the most direct, central and practicable route through the territories of the United States to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

Section 14 of said act of July 1, 1862, authorized and required the said Union Pacific Railroad Company to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa to be fixed by the President of the United States upon the most direct and practicable route to be subject to his approval so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude aforesaid from the point of commencement on the western boundary of the State of Iowa upon the same terms and conditions in all respects as were in said act contained for the construction of said railroad and telegraph line above mentioned.

That said act of July 1, 1862, granted the right of way through the public lands of said railroad company for the construction of said railroad and telegraph line, and the right, power and authority to said company to take from the public lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof; said right of way so granted to said railroad company being to the extent of 200 feet in width on each side of its railroad where it should pass over the public lands, including all necessary grounds for stations, buildings, workshops and depots, machine shops, switches, side tracks, turn-tables and water stations.

That section 5 of said act provided that for the purposes therein mentioned the Secretary of the Treasury should, upon the certificate in writing of certain commissioners (the appointment and duties of whom were in said act provided) of the completion and equipment of forty consecutive miles of said railroad and telegraph in accordance with the provisions of said act, issue to said railroad company bonds of the United States of $1,000 each, payable in thirty years after date bearing six per centum per annum interest (said interest payable semi-annually), which interest might be paid in United States Treasury notes or any other money or currency which the United States had or should declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States as in said act provided of the amount of said bonds so issued and delivered to said railroad company, together with all interest thereon which should have been paid by the United States.

Said act further provided that the issue of said bonds and the delivery to the said company should *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph property, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds might be issued.

Section 11 of said act of July 1, 1862, provided that for 300 miles

of the road of the said Union Pacific Railroad Company most mountainous and difficult of construction, to wit, 150 miles westwardly from the eastern base of the Rocky mountains and
6 150 miles eastwardly from the western base of the Sierra Nevada mountains, said points to be fixed by the President of the United States, the bonds to be issued in aid of the construction of said road should be treble the number per mile in said act before provided (to wit, $48,000 per mile instead of $16,000 per mile), and that the same should be issued on the certificate of said commissioners as in said act before provided, that twenty consecutive miles of the said road were completed; and that between the sections last named of 150 miles each the bonds to be issued to aid in the construction should be double the number per mile first mentioned (to wit, $32,000 instead of $16,000 per mile), and that the same should be issued upon the construction of every twenty miles thereof upon the certificate of the said commissioners as aforesaid that twenty consecutive miles of the same were completed; provided that no more than 50,000 of said bonds should be issued under said act to aid in constructing the main line of said railroad and telegraph.

Section 10 of said act of July 2, 1864 (amendatory of said act of July 1, 1862), provided that said section 5 of said act of July 1, 1862, be so modified and amended that the Union Pacific Railroad Company might, on the completion of each section of its road as provided in said act of July 2, 1864, and in said act of July 1, 1862, issue its first-mortgage bonds on its railroad and the telegraph line to an amount not exceeding the amount of the bonds of the United States and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said company; and that the lien of the United States bonds should be subordinate to that of the bonds of said railroad company in said act authorized to be issued on its road, property and equipments, except as to the provisions of the sixth section of the said act of July 2d, 1862, relating to the transmissions of dispatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States; and further provided that said section 5 of said act of July 1st, 1862, be further amended by striking out the word "forty" and inserting in lieu thereof the words "on each and every section of not less than twenty."

That in and by an act of Congress of the United States, approved March 3d, 1865, it was enacted that section 10 of said (*of*) act of July 2d, 1864 (being the section of said last-mentioned act the provisions whereof are last hereinabove set forth) be so modified and amended as to allow the said The Union Pacific Railroad Company, among other companies, to issue its six per centum 30-year bonds, interest payable in lawful money of the United States,
7 upon its separate road, and to issue its bonds to the extent of 100 miles in advance of a continuous completed line of construction.

That by an act of the Congress of the United States, approved

July 3d, 1866, the said Union Pacific Railroad Company, with the consent and approval of the Secretary of the Interior, was authorized to locate, construct and continue their road from Omaha in Nebraska Territory westward, according to the best and most practicable route and without reference to the initial point on the one hundredth meridian of west longitude, as then provided by law, in a continuous completed line until they should meet and connect with the Central Pacific Railroad Company of California, and the said Central Pacific Railroad Company of California, with like consent and approval, was authorized to locate, construct and continue its road eastward in a continuous completed line until they should meet and connect with the Union Pacific railroad.

Third. That, pursuant to provisions of the congressional legislation hereinbefore recited, the President of the United States by executive orders, dated November 17th, 1863, and March 7th, 1864, duly fixed the eastern terminus of the Union Pacific railroad on the Iowa bank of the Missouri river; and thereafter and prior to the date of the consolidation hereinafter mentioned the said Union Pacific Railroad Company constructed and completed its line of railroad and telegraph, with the appurtenances thereto belonging, from Council Bluffs in the State of Iowa, westerly through the States (then Territories) of Nebraska, Colorado and Wyoming, and into the Territory of Utah to a connection with the railroad of the said Central Pacific Railroad Company at a point about five miles west of Ogden in said Territory of Utah, a distance of 1,042.93 miles, more or less, including a bridge over the Missouri river between said Council Bluffs in the State of Iowa and Omaha in the State of Nebraska; all of which lines of railroad and telegraph and bridge, with the appurtenances thereof, were constructed as, in the manner, upon the conditions, within the time and upon the approvals and consents contemplated, defined and prescribed in said congressional legislation; and all of which said line of railroad, telegraph, bridge and appurtenances are, as your orators are advised and aver, embraced in and included in the first mortgage of the said Union Pacific Railroad Company of November 1st, 1865, of which your orators are successor trustees, as hereinafter stated.

Fourth. Your orators further aver that on or prior to the 1st day of November, 1865, the said The Union Pacific Rail-
8 road Company, being duly authorized by law, to wit, by the acts of the Congress of the United States hereinbefore referred —, to borrow money and issue its bonds for the objects and purposes in said acts mentioned and to execute a mortgage to secure the payment thereof, which said bonds and mortgage by said acts of Congress were made the first lien unto which the lien of the bonds issued by the Government in aid of the construction of said railroad were by said acts made subordinate; and being desirous of borrowing a sum of money which should be equal to the amount per mile of United States bonds provided by said acts to be issued to said company for each and every mile of its said railroad then completed and to be thereafter completed, and of securing by mortgage the payment of its corporate bonds to be issued and negotiated therefor,

did, under, and pursuant to such lawful authority conferred by said acts of Congress, duly determine and resolve to make, execute, issue, negotiate and deliver, under its corporate seal, its corporate bonds, from time to time, and severally payable to bearer, for the sum of $1,000 each, thirty years after the date thereof, with semi-annual interest at the rate of six per centum per annum from the date thereof, to an amount equal and not exceeding per mile the amount provided to be issued by the Government of the United States to aid in the construction of said railroad; each of said bonds so to be issued to bear date of the time of its issue and to be in form and be certified and have coupons annexed as set forth and shown in the first mortgage hereinafter mentioned, copy whereof is attached hereto as part of this bill of complaint and marked Exhibit "A."

And in pursuance of the determination and resolution aforesaid, and of due corporate action, and as thereunto duly authorized by law, the said Union Pacific Railroad Company did thereafter duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the considerations and purposes and in the manner provided in said first mortgage, its bonds to the number of 27,229, in the aggregate amount of $27,229,000, which said bonds bore date and by their terms matured as hereinafter set forth, and in each of which the said Union Pacific Railroad Company promised to pay the sum of $1,000 to the holder thereof at its office in the city of New York thirty years after the date thereof, and also interest thereon at the rate of six per centum per annum, payable semi-annually from the date thereof, in lawful money of the United States, until the principal sum be paid, on presentation of the interest coupons annexed thereto at the office of the said company in the city of New York. A copy of each of said bonds (except as to the serial number, date and the
9 signatures of the officers of the said railroad company) is set forth and included in the said first mortgage, copy whereof is, as aforesaid, attached hereto as part hereof.

Fifth. Your orators further state that, pursuant to the said determination and resolution of the said Union Pacific Railroad Company and to due corporate action of said company and as thereunto authorized by law, and pursuant to authority so conferred by acts of Congress, as aforesaid, and for the purposes in said resolution and determination specified, and to secure the payment of the said bonds so to be issued by said railroad company and of the interest to grow due thereon, the said Union Pacific Railroad Company did, on or about the 1st day of November, 1865, duly make and execute under its corporate seal, and did deliver to Edwin D. Morgan, of the city of New York, and Oakes Ames, of Easton, in the State of Massachusetts, as trustees, a mortgage or deed of trust, dated on said 1st day of November, 1865, wherein and whereby the said Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm unto the said Edwin D. Morgan and Oakes Ames, as trustees, and in trust for the purposes aforesaid, and to the survivor of them and to their successor or succes-

sors, all and singular the railroad, telegraph, property and franchises in said mortgage described as follows:

"All and singular the railroad and telegraph of the said party of the first part (the said Union Pacific Railroad Company), heretofore constructed, or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said acts of Congress, to wit, at the city of Omaha, in the Territory of Nebraska; thence, as provided in said acts of Congress, through the Territories of the United States to the western boundary of the late Territory of Nevada, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double, or other track, railroad and telegraph line, and for depots, engine-houses, car-houses, station-houses, warehouses, machine shops, superstructures, erections and fixtures, being necessary for the use of said railroad or telegraph; and also all and singular the franchises now owned, possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine shops, workshops and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad or telegraph line, or the running and operating the same."

A copy of said mortgage is attached hereto as part hereof, marked Exhibit "A."

Sixth. That subsequently and on or about the 12th day of March, 1868, the said Union Pacific Railroad Company made and entered into an agreement or indenture supplemental to said first mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, trustees, dated on said March 12th, 1868, wherein and whereby the said Union Pacific Railroad Company, for good and valuable consideration therein expressed, agreed with the said Edwin D. Morgan and Oakes Ames, trustees, for the benefit of all who then were or should thereafter be holders of said first-mortgage bonds, and to and with the successors of said trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all said first-mortgage bonds, being $1,000 each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said railroad company whensoever they should respectively become payable, according to the tenor thereof, in the gold coin of the United States at par, that is to say, $1,000 of such coin for each of said bonds. That thereafter the said Union Pacific Railroad Company, or said successor company, the Union Pacific Railway Company, did, as your orators are informed and believe, stamp or caused to be stamped upon all or substantially all of the said bonds issued under and secured by said first

mortgage of November 1st, 1865, a provision to the effect that the same should be payable in United States gold coin. That a copy of said agreement or supplemental indenture of March 12th, 1868, is attached hereto and made part hereof, marked Exhibit "B."

Seventh. Your orators further show that the said Edwin D. Morgan and Oakes Ames, trustees as aforesaid under said first mortgage of November 1st, 1865, duly accepted said mortgage and the trusts thereunder, and continued to be and act as the trustees thereof until their deaths, respectively. That on the 8th day of May, 1873, the said Oakes Ames died, and on December 3d, 1873, Oliver Ames was duly appointed trustee in the place and stead of said Oakes Ames; and the said Oliver Ames afterwards, to wit, on the 9th day of March, 1877, died; and on June 1st, 1881, Frederick L. Ames was duly appointed trustee in the place and stead of said
11 Oliver Ames. That on the 14th day of February, 1883, Edwin D. Morgan died; and on March 6th, 1883, F. Gordon Dexter was duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on the 13th day of September, 1893, Frederick L. Ames died, and on October 12th, 1893, Oliver Ames, Second, was duly appointed trustee under said mortgage in the place and stead of said Frederick L. Ames. Each of the said trustees, original and successor, duly accepted said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames, Second, your orators herein, now are the trustees under said mortgage.

Eighth. Your orators further aver that said $27,229,000 of first-mortgage bonds, issued by the said Union Pacific Railroad Company and secured by said mortgage of November 1st, 1865, of which your orators are successor trustees as aforesaid, were, as your orators are informed and believe, duly certified by the original trustees under said mortgage and were, prior to any succession in said trusteeship, duly issued, negotiated and delivered as, in the manner and for the considerations and purposes, and upon the conditions provided and defined in and by the provisions of said first mortgage; and that all of said bonds are and were, prior to the defaults hereinafter recited, outstanding in the hands of the persons to whom the same were issued, or their successors in interest.

That the bonds so issued and outstanding bear date and mature respectively as follows:

Said bonds to the amount of six million four hundred and seventy-five thousand dollars are dated on the first day of January, 1866, and the principal thereof will mature on the first day of January, 1896.

Said bonds to the amount of one million five hundred and ninety-eight thousand dollars are dated on the first day of January, 1867, and the principal thereof will mature on the first day of January, 1897.

Said bonds to the amount of one million nine hundred and twenty thousand dollars are dated on the first day of July, 1867, and the principal thereof will mature on the first day of July, 1897.

Said bonds to the amount of five million nine hundred and

ninety-nine thousand dollars are dated on the first day of January, 1868, and the principal thereof will mature on the first day of January, 1898.

Said bonds to the amount of eight million eight hundred and thirty-seven thousand dollars are dated on the first day of
12 July, 1868, and the principal thereof will mature on the first day of July, 1898.

Said bonds to the amount of two million four hundred thousand dollars are dated on the first day of January, 1869, and the principal thereof will mature on the first day of January, 1899.

Ninth. Your orators aver that the said defendant, The Union Pacific Railway Company, made default in the payment of all of the interest and of the coupons representing such interest which became due on said first-mortgage bonds on the first day of July, 1894, although, as your orators are informed and believe, payment of said interest and coupons, or of some, or some portion thereof, was duly demanded by holders of said bonds, and that said default continued in whole until on or about the 27th day of November, 1894, when the receivers hereinafter mentioned offered to pay said defaulted interest at the face of the coupons representing the same, but not including interest accrued upon said coupons; and that a portion of such defaulted interest and of said coupons, the amount whereof your orators cannot accurately state, has been paid by said receivers at the face of said coupons, but that no part of the interest accrued upon said defaulted coupons has been paid or tendered by the said receivers or by the Union Pacific Railway Company or by any person on behalf of either, or otherwise, but all of the interest upon said defaulted coupons remains due and unpaid.

Your orators further aver that no part of the interest and of the coupons representing the interest which became due on each and all of said outstanding first-mortgage bonds, on the first day of January, 1895, was paid by the defendant, The Union Pacific Railway Company, or by said receivers, or by any one in their behalf or in behalf of either of them, or otherwise; but that said defendant railway company wholly made default in the payment of said interest and coupons which fell due on said bonds on the first day of January, 1895, and the same and every part thereof has ever since remained unpaid and in default, although payment of said interest and coupons, or of some part or some thereof, has, as your orators are informed and believe, been duly demanded.

Tenth. Your orators further show that on the 9th day of October, 1893, Oliver Ames, Second (one of your orators herein), and Samuel Carr, citizens and residents of the State of Massachusetts, as executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff, a citizen and resident of the State of New York, and Edwin F. Atkins, a citizen and resident of the
13 State of Massachusetts, filed in this court a bill of complaint against the Union Pacific Railway Company and others in a certain cause entitled as follows:

Circuit Court of the United States for the Eighth Judicial Circuit, District of Nebraska.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, and Peter B. Wyckoff and Edwin F. Atkins, Complainants,

vs.

THE UNION PACIFIC RAILWAY COMPANY, THE ATCHISON, COLORADO and PACIFIC Railway Company, The Atchison, Jewell County and Western Railway Company, The Boulder Valley and Central City Wagon Road Company, The Bozeman Coal Company, The Callaway Improvement Company, The Carbon Cut-off Railway Company, The Central Branch Union Pacific Railroad Company, The Denver, Leadville and Gunnison Railway Company, The Green River Water Works Company, The Junction City and Fort Kearney Railway Company, The Kansas Central Railroad Company, The Kansas City and Omaha Railroad Company, The Kearney and Black Hills Railway Company, The Laramie, North Park and Pacific Railroad and Telegraph Company, The Lawrence and Emporia Railway Company, The Loveland Pass Mining and Railroad Tunnel Company, The Montana Railway Company, The Morrison Stone, Lime and Town Company, The Omaha and Republican Valley Railway Company, The Oregon Railway and Navigation Company, The Oregon Short Line and Utah Northern Railway Company, The St. Joseph and Grand Island Railroad Company, The Salina and Southwestern Railway Company, The Solomon Railroad Company, The Union Land Company, The Union Pacific, Denver and Gulf Railway Company, The Union Pacific, Lincoln and Colorado Railway Company, and The Union Pacific Coal Company, Defendants.

That the title of said bill was subsequently amended by orders of court by the interlineation of the names of the following additional defendants:

The Cascade Railroad Company, The Columbia & Palouse Railroad Company, The Mill Creek Flume and Manufacturing Company, The Oregon Railway Extensions Company, The Walla Walla & Columbia River Railroad Company, The Washington & Idaho Railroad Company, The Wood River Improvement Company, The Echo & Park City Railway Company, The Rattlesnake Creek Water Company, and The Boise City Railway and Terminal Company.

14 That in and by said last-mentioned bill of complaint (hereinafter, for convenience, called the "Ames bill"), the complainants in said cause, the title whereof is last above recited (which said cause is hereinafter, for convenience, styled the "Ames cause") represented and showed to this court that the Union Pacific Railway Company (being the same company as The Union Pacific Railway Company, one of the defendants herein) was created by and existed under certain laws of the United States, to wit, the acts of

Congress hereinbefore in that behalf referred to, and that the remaining defendants in said bill were incorporations organized and existing respectively under the laws of several States, namely, Kansas, Colorado, Montana, Nebraska, Wyoming, Oregon, the Territory of Utah and the Territory of New Mexico; and that the defendant, The Union Pacific Railway Company, was owner of large amounts in value of the shares of stock and bonds of said several other defendant corporations, and operated the railroads, telegraphs and properties thereof through and by virtue of such ownership of securities and by contracts and arrangements, the particulars whereof are fully set forth in said Ames bill. Said bill further represented and showed that the complainants therein were re-pectively the holders in various amounts of the stock, bonds and obligations of the said Union Pacific Railway Company and of many of the said other corporations defendants in said bill. Said bill further alleged in detail the stock capitalization, bonded and mortgage indebtedness, guarantees and floating obligations and liabilities of the defendants therein, and particularly alleged the several mortgages of the Union Pacific Railway Company, covering, embracing or effecting the railroads and properties embraced in said first mortgage of the Union Pacific Railroad Company of November 1, 1865, of which your orators are trustees. Said bill further alleged the current and then presently accruing obligations of the said defendant Union Pacific Railway Company, the resources, earnings and financial condition of said company, and that by reason of a prevailing depression in business and extraordinary stringency of money markets, and by reason of other causes in said bill set forth, the earnings of said company had been seriously depleted, and it was charged in said bill that for the year 1893 the business of said company would fail to meet its expenses and charges by the sum of at least three million dollars; and that the said railway company was not then able, and would not thereafter during the year 1893, be able to earn, either upon its own lines of railway or upon its said system, or either or both of them, its operating expenses and fixed charges, and that the said defendant,

The Union Pacific Railway Company, was insolvent and could not meet or pay its indebtedness or liabilities as they fell due or accrued in the usual and ordinary course of business.

Said Ames bill prayed for the appointment by this court of receivers of all of the railroad and property of the Union Pacific Railway Company, and each of the other defendants therein, and the prayer of the said Ames bill (omitting that portion thereof praying for writ of subpœna) was as follows:

"2. That the court will fully administer the trust fund in which your orators are interested, constituting the entire railroad system, lands and assets of the said defendant corporation, The Union Pacific Railway Company, and will for such purpose marshal all its assets and ascertain the several respective liens and priorities existing upon each and every part of all the said system of railway and property, and the amount due upon each and every part of such mortgages or other liens, and enforce and decree the rights,

liens and equities of each and all of the stockholders and bondholders and creditors of the said defendants, and of each of them, as the same may be finally ascertained and decreed by the court upon the respective interventions or applications of each and every of such stockholder, creditor or lienor, in and to not only said lines of railroad, appurtenances, equipments, lands and property, but also to and upon each and every portion of the assets and property of each of the said corporations.

"3. That, for the purpose of enforcing the liens and equities of the holders of the loans and of the floating debt of the said defendant The Union Pacific Railway Company, and of the respective stockholders, bondholders, lienholders and general creditors of each of the said defendants, and of each of the companies embraced in or operated as a part of the said system, as well as to preserve the unity of said system as it has been for years maintained and operated, and preventing the disruption thereof by separate executions, attachments and sequestrations, the occurrence of which will be unavoidable in view of the inevitable defaults in interest and other payments which will soon occur, your orators pray that this court will forthwith appoint one or more receivers of the entire system of railroads held, controlled, leased or operated by, or in the interest, or for the benefit of the said defendant, The Union Pacific Railway Company, and of all the equipments, material, machinery, supplies, moneys, accounts, choses in action, shares of stock, bonds, property and assets of every description, and wheresoever situated, and of all said lands and land grants, leasehold, contractural rights and property belonging to the said defendant, The Union Pacific Railway Company, as well also as all those belonging to each of the
16 defendants herein, and those of each the said several companies controlled, leased or operated by, for or in the interest of said Union Pacific Railway Company, as a part of, or in connection with, said system, with authority to manage and operate the same; and that each of the defendants, and the officers, managers, superintendents, agents and employees of each of the defendants be required forthwith to deliver up the possession of all and singular each and every part of the said property over which the receivers shall be appointed, wherever situate; also all books of accounts, office vouchers and papers in any way relating to the business or operation of said system of railways, and for an injunction restraining perpetually and during the pendency of this suit each of the defendants and every of the officers, directors, managers, superintendents, agents and employees of each of the defendants, and all persons whomsoever, from interfering in any way whatever with the possession and control of the receivers over any part of said property.

"4. And that your orators may have such other and further relief as to the court may seem proper, and as may be necessary to fully enforce the rights and equities of your orators, and of all other creditors and stockholders of the defendant corporations."

Your orators pray leave to refer to said Ames bill or to a duly authenticated copy thereof, when the same shall be produced upon

the final hearing or upon any hearing herein, with the same force and effect as if said bill were herein set out at length.

Your orators further show that upon the filing of said Ames bill The Union Pacific Railway Company, one of the defendants herein, filed its answer thereto and each and every other defendant company in said bill named filed its entry of appearance in said Ames cause; the said Union Pacific Railway Company by its said answer admitting the allegations of said bill and consenting to the appointment of receivers as therein prayed and said other corporations defendants in said bill, each in and by its entry of appearance, likewise consenting to such appointment of receivers.

That thereafter and upon the 13th day of October, 1893, Hon. Elmer S. Dundy, one of the judges of this court, made an order appointing receivers as in said bill prayed, which said order was filed in said cause on said 13th day of October, 1893. A copy of said order appointing receivers is attached hereto as part thereof and marked Exhibit "C."

17 That in and by said order of October 13th, 1893, S. H. H. Clark, of St. Louis, Missouri; Oliver W. Mink, of Boston, Massachusetts, and E. Ellery Anderson, of New York (all of whom are made defendants herein), were appointed receivers of the defendant The Union Pacific Railway Company, and of all the railroads and assets described in said Ames bill, being the system of railroads owned, possessed, held and controlled, leased or operated by, for or in the interest of the said Union Pacific Railway Company, and all the property of said Union Pacific Railway Company, and of each of said other companies, defendants in said Ames bill, real, personal and mixed, of whatever kind and description and wherever situated, whether described in said Ames bill or not, including all equipments, locomotives, cars and other rolling stock, boats, steamships, docks, piers, floats, machinery, tools, material, shops, coal yards and fixtures, coal on hand and supplies then owned, held or in possession of any of said defendants in said Ames bill, and including all track, terminal facilities, real estate, warehouses, offices, stations and other buildings of every kind owned, held or possessed by said companies, together with all telegraph lines and the appurtenances thereto, and also all the moneys, books of account, contracts of every kind, debts, things in action, bonds, stocks, securities, deeds, leases, leasehold interests, beneficial muniments of title, bills receivable, rents, profits and income of the premises accruing and to accrue, as well as all franchises, rights, easements and privileges of each of said companies defendant in said Ames bill.

That said receivers so appointed by this court qualified as such and thereupon took possession of all the lines of railroad, lands and properties of every description embraced in and covered by said order, and have since (together with the additional receivers hereinafter mentioned, from the date of their appointment) continuously held and now hold (with said additional receivers) possession thereof, controlling, using, operating and managing the same as in said order directed and prescribed. That on the 13th day of November, 1893, an order was made in said Ames cause in this court appoint-

ing John W. Doane, of Illinois, and Frederic R. Coudert, of New York city, additional receivers of this court, of all and singular the Union Pacific railway and of all the railroad, property and assets described in the Ames bill of complaint, and more particularly described in the order of this court theretofore entered in said Ames cause, appointing S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson receivers. That it was in said order appointing such
18 additional receivers provided that John W. Doane and Frederic R. Coudert, acting and co-operating with the said receivers, Clark, Mink and Anderson, should have all the powers granted to, and perform all the duties imposed upon, the said receivers, Clark, Mink and Anderson, by the former orders of this court, as fully and to the same effect as if the original order of this court, appointing the said Clark, Mink and Anderson as such receivers, had embraced the names of five receivers instead of three, namely, of the said Doane and Coudert in addition to the said Clark, Mink and Anderson. A copy of the order appointing such additional receivers is attached hereto as part hereof, and marked "Exhibit D." That said additional receivers thereupon qualified as such, and have been and now are acting and in possession as such with said receivers originally appointed as aforesaid.

Like bills were filed by the complainants in said Ames cause in the circuit courts of the United States for the other several districts in which property of said defendants was located, and among other courts, in the United States circuit courts for the southern district of Iowa, for the district of Colorado, and for the district of Wyoming, and in the district court for the third judicial district of the Territory of Utah; and in each and all of said jurisdictions like proceedings were thereupon had and like orders entered appointing the same persons ancillary receivers of all the property of said defendants, in said Ames bill, situated in said several jurisdictions, respectively. Said receivers so appointed duly qualified as such and have been and now are in possession, as such receivers, of all the property of said defendants situated within the territorial jurisdiction of said courts, respectively. To each and all of said bills, proceedings and orders, and especially to the bills, proceedings and orders filed and made in the circuit courts of the United States for the southern district of Iowa, for the district of Colorado, and for the district of Wyoming, and in the district court for the third judicial district of the Territory of Utah, your orators pray leave to refer with the same force as if the same were here set out at length.

Eleventh. Your orators further show that all the lines of railroad and telegraph, lands, and all property of every description embraced in said first mortgage of the Union Pacific Railroad Company, of November 1st, 1865, are, by virtue of said order appointing receivers in said Ames cause (which cause is still pending and undetermined in this court), in the possession, custody and control of this court, and that all of said property so embraced in said mortgage is in process of administration by this court, by reason whereof your orators are and will be unable, save as herein sought,
19 to take possession of the same, and through possession thereof to administer their trust as in said mortgage it was provided

they should do in the event of default in the payment of interest as therein specified, and to have the mortgaged premises sold and duly administered and their said security enforced as in said mortgage contemplated and provided.

Your orators further show that said Union Pacific Railway Company is insolvent and unable to meet its operating expenses and accrued obligations, and it is in default in the payment of interest heretofore matured on its bonded debt and guaranties in an amount aggregating several millions of dollars.

Your orators further show that said Union Pacific system comprises many roads operated as part of said system by virtue of ownership of stock by the said Union Pacific Railway Company, or of leases or of other arrangements, which are unproductive, the earnings whereof have in past years been insufficient, and continue to be insufficient to meet the expenses of operating the same; and upon information and belief your orators aver and charge that the revenues derived from other parts of the said Union Pacific system, and particularly revenues derived from the railroad known as the Union division, and embraced in the said first mortgage to your orators as trustees, and which revenues are an essential element of said mortgage security, have been, and continue to be, by said receivers diverted and used for the purpose of meeting the said deficit in the earnings of said unproductive roads and parts of the system.

Your orators further show that said first mortgage specifically pledges to your orators, as trustees thereof, and for the security of holders of bonds issued thereunder, all of the franchises of the said mortgagor described in said mortgage, including, as your orators are advised and aver, the franchise to levy, charge, collect and receive charges, tolls, income and revenues upon and from and for the use and from the operation of the railroad, telegraph and property embraced in said mortgage, and including the franchise to maintain and operate said railway; and said mortgage further provides that, in the event of default, as in said mortgage specified, in the payment of interest on said bonds, and upon the request of holders of bonds as therein provided, it shall be the duty of said trustees (—) forthwith enter into and take possession of all and singular the said mortgaged property, rights and franchises, and use, operate and manage the same for the benefit of the holders of all said bonds.

Your orators further show that by reason of the insolvency of the defendant The Union Pacific Railway Company, the
20 mortgagor (as successor to said Union Pacific Railroad Company as aforesaid), and by reason of the diversion, by the said receivers in the Ames cause, of the revenues of the estate mortgaged to your orators as aforesaid, and by reason of the fact that said revenues form, as your orators charge and aver, an essential element of the security of your orators and of the holders of said bonds secured by said mortgage, your orators are entitled to have the said revenues forthwith immediately and continuously appropriated to the payment of the interest upon the said bonds secured by said mortgage.

Your orators further state that, as they are informed and believe, the said mortgaged premises, under the conditions aforesaid, and as the same are now situated and circumstanced, are insufficient and inadequate security for the payment of the outstanding bonds secured by said first mortgage of the Union Pacific Railroad Company of November 1st, 1865, of which your orators are successor trustees.

Your orators further show that, by reason of the premises, your orators, as such trustees, are entitled to have their trust with respect to said mortgaged estate duly administered and executed, and to have said mortgaged premises sold; and, to the end that they may have a decree enforcing their security, together with proper intermediate relief, they bring this their bill of complaint.

Twelfth. That the United States of America has or claims to have a lien upon the railroad and property, or some part of the railroad and property, embraced in the said first mortgage of which your orators are trustees, arising out of and created by the acts of Congress of the United States hereinbefore referred to, which, among other things, provide a lien to secure the bonds of the United States, issued in aid of the construction of said railroad, or of parts thereof; or, said United States of America otherwise has or claims to have some interest in or lien upon said railroad and property.

That the defendant The Union Trust Company of New York is a corporation organized under the laws of the State of New York, and is a citizen and resident of said State of New York; that said last-named company has or claims to have some lien upon or interest in the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage made by the said Union Pacific Railroad Company to the said Union Trust Company of New York as trustee, dated on the 18th day of December, 1873, and known as the "sinking fund indenture" of the said Union
21 Pacific Railroad Company; or, said Union Trust Company otherwise has or claims to have some lien upon or interest in said railroad and property, or upon or in a part thereof.

That the defendant J. Pierpont Morgan is a citizen and resident of the State of New York, and the defendant Edwin F. Atkins is a citizen and resident of the State of Massachusetts, and said defendants Atkins and Morgan have or claim to have some lien upon or interest in or upon some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage or deed of trust made by the said Union Pacific Railroad Company to John Edgar Thomson of Philadelphia (since deceased), and to said J. Pierpont Morgan and Elisha Atkins, dated on the 1st day of April, 1871, and known as the "Omaha Bridge mortgage," and arising out of an agreement between the Union Pacific Railroad Company and said Thomson, Morgan and Atkins, dated on the 27th day of September, 1871, and known as the "supplemental Omaha Bridge mortgage;" or said Morgan and Atkins otherwise have or claim to have some lien upon or interest in or upon some part of said property.

That the defendant The Central Trust Company of New York is a corporation organized and existing under the laws of the State of New York, and is a citizen and resident of the said State of New York; that said last-named defendant has or claims some lien upon or interest in a part of the property conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage made by the defendant The Union Pacific Railway Company to the said Central Trust Company of New York, as trustee, dated on the 1st day of October, 1885, and known as the "Omaha Bridge renewal mortgage;" or said Central Trust Company otherwise has or claims to have some lien upon or interest in a part of the said property.

That the defendant The Central Pacific Railroad Company is a corporation organized and existing under the laws of the State of California, and is a citizen and resident of said State of California; that said defendant has or claims to have some lien upon or right of interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement or lease, dated June 13, 1875, made, as your orators are informed and believe, between the said Central Pacific Railroad Company and the said Union Pacific Railroad Company, and arising out of a further agreement dated on the 10th day of February, 1888, and made by and between the said Union Pacific Railway Company and the said Central
22 Pacific Railroad Company; or, the said Central Pacific Railroad Company otherwise has or claims to have, some such lien, right or interest.

That the defendant The Southern Pacific Company is a corporation organized and existing under the laws of the State of Kentucky, and is a citizen and resident of said State of Kentucky; that said last-named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage, of which your orators are trustees, arising out of some contract, lease or other agreement heretofore made between said Central Pacific Railroad Company and said Southern Pacific Company, of the date and terms of which your orators are not advised, or said Southern Pacific Company otherwise has or claims to have some such lien, right or interest.

That the defendant The St. Joseph & Grand Island Railroad Company is a corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas; that said St. Joseph & Grand Island Railroad Company has or claims to have some lien upon, or right, or interest in or upon the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of two certain agreements, one — which was dated on the 1st day of July, 1885, and made and entered into between the said St. Joseph & Grand Island Railroad Company and the defendant The Union Pacific Railway Company, and the other of which was dated on the 1st day of January, 1887, and made and entered into between the Kansas City & Omaha Railroad Company, the said St. Joseph & Grand

Island Railroad Company, and the said Union Pacific Railway Company; or said defendant The St. Joseph & Grand Island Railroad Company otherwise has or claims to have some lien upon or right, or interest in the said property, or some part thereof.

That the defendant The Kansas City & Omaha Railroad Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska. That said last-named defendant has, or claims to have, some lien upon, or right, or interest in or upon the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement dated January 1st, 1887, between the said Kansas City & Omaha Railroad Company, the St. Joseph & Grand Island Railroad Company, and the Union Pacific Railway Company; or the
23 said defendant The Kansas City & Omaha otherwise has or claims to have some such lien, right or interest.

That the defendant The Oregon Railway & Navigation Company is a corporation organized and existing under the laws of the State of Oregon and is a citizen and resident of said State of Oregon. That said last-named defendant has or claims to have some lien upon or right or interest in the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of two certain agreements made and entered into between the said Oregon Railway & Navigation Company, the Oregon Short Line & Utah Northern Railway Company and the Union Pacific Railway Company, dated respectively on the 1st day of January, 1887, and the 7th day of November, 1887; or said Oregon Railway & Navigation Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Oregon Short Line & Utah Northern Railway Company is a consolidated corporation organized and existing under the laws of the States of Wyoming, Idaho, Oregon and Montana, and of the Territory of Utah, and is a citizen and resident of each of said last-mentioned States and of said Territory; that said last-named defendant has or claims to have some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Oregon Short Line & Utah Northern Railway Company and the said Union Pacific Railway Company, dated on the 6th day of December, 1889; or said Oregon Short Line & Utah Northern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Union Pacific, Lincoln & Colorado Railway Company is a consolidated corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas; that said last-mentioned defendant has or claims to have some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Union Pacific, Lincoln & Colorado Rail-

way Company and the said Union Pacific Railway Company, dated on the 1st day of August, 1888; or said Union Pacific, Lincoln & Colorado Railway Company otherwise claims to have some such lien, right or interest.

That the defendant The Chicago & Northwestern Railway Company is a corporation organized and existing under the laws
24 of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin; that said last-named defendant has or claims to have some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Chicago & Northwestern Railway Company and the Union Pacific Railway Company, dated on October 18th, 1889; or said Chicago & Northwestern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Omaha & Republican Valley Railway Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska; that said last-named defendant has or claims to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of three certain agreements, the first of which was dated on the 18th day of October, 1889, and made and entered into between the said Omaha & Republican Valley Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and to which the Union Pacific Railway Company assented and became a party by agreement of the same date; the second of which was dated on the 14th day of March, 1890, and was made and entered into between the said Omaha & Republican Valley Railway Company, the Kearney & Black Hills Railway (—) and the Union Pacific Railway Company, and the third of which was dated on the 1st day of May, 1890, and was made and entered into by and between the said Union Pacific Railway Company, the said Omaha & Republican Valley Railway Company, the Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Kansas & Nebraska Railway Company; or said defendant, The Omaha & Republican Valley Railway Company, otherwise has or claims to have some such lien, right or interest.

That the defendant The Chicago, St. Paul, Minneapolis & Omaha Railway Company is a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin. That said last-named defendant has or claims to have some lien or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement dated October 18, 1889, and made and entered into by and between the Omaha & Republican Valley Railway Com-
25 pany, the said Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Union Pacific Railway Company; or

said Chicago, St. Paul, Minneapolis & Omaha Railway Company otherwise has or claims to have some such lien, right or interest.

The Kearney & Black Hills Railway Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska; and said last-named defendant has or claims to have some lien upon, or right or interest in or upon, the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement and dated on the 14th day of March, 1890, and made and entered into by and between the said Omaha & Republican Valley Railway Company, the said Kearney & Black Hills Railway Company, and the said Union Pacific Railway Company; or said Kearney & Black Hills Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendants Frank H. Peavy, E. C. Michener and Charles T. Peavy, copartners under the firm — and style of F. H. Peavey & Company, are citizens and residents of the State of Minnesota, and each of them is a citizen and resident of said last-named State. That said last-named defendants have or claim to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 15th day of March, 1890, made and entered into by and between the said Union Pacific Railway Company, the said Frank H. Peavy, E. C. Michener and Charles T. Peavy, copartners under the firm name and style of F. H. Peavy & Company; or the said Frank H. Peavy, E. C. Michener and Charles T. Peavy, copartners as aforesaid, otherwise have or claim to have some such lien, right or interest.

That the defendant The Union Pacific, Denver & Gulf Railway Company is a consolidated corporation organized and existing under the laws of the States of Colorado and Wyoming, and is a citizen and resident of each of said last-mentioned States. That said last-named defendant has or claims to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 1st day of April, 1890, made and entered into by and between the said Union Pacific, Denver & Gulf Railway Company and the
26 said Union Pacific Railway Company; or said defendant The Union Pacific, Denver & Gulf Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Chicago, Milwaukee & St. Paul Railway Company is a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin. That said last-named defendant has or claims to have some lien upon or right or interest in the property, or some part of the property, described in or conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 30th day of April, 1890, and made and entered into by

and between the said Union Pacific Railway Company and the said Chicago, Milwaukee & St. Paul Railway Company; or the said Chicago, Milwaukee & St. Paul Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Salina & Southwestern Railway Company is a corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas. That the said last-named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 1st day of May, 1890, and made and entered into by and between the Union Pacific Railway Company, the said Omaha & Republican Valley Railway Company, the said Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Kansas & Nebraska Railway Company; or said The Salina & Southwestern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Chicago, Rock Island & Pacific Railway Company is a corporation organized and existing under the laws of the States of Illinois and Iowa, and is a citizen and resident of said last-mentioned States. That said last-named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said last-mentioned agreement of May 1st, 1890, to which the said Chicago, Rock Island & Pacific Railway Company was a party as aforesaid; or said defendant The Chicago, Rock Island & Pacific Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Chicago, Kansas & Nebraska Rail-
27 way Company is a corporation organized and existing under the laws of the States of Kansas and Colorado, and is a citizen and resident of each of said last-mentioned States. That said last-named defendant has or claims some lien upon or right of interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said last-mentioned agreement of May 1st, 1890, to which said The Chicago, Kansas & Nebraska Railway Company was a party as aforesaid; or said defendant The Chicago, Kansas & Nebraska Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Missouri Pacific Railway Company is a corporation organized and existing under the laws of the State of Missouri, and is a citizen and resident of said State of Missouri. That said last-named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage, of which your orators are trustees, arising out of a certain agreement between the said The Missouri Pacific Railway Company and the said Union Pacific Railway Company, dated the 2d day of May,

1892; or said defendant The Missouri Pacific Railway Company otherwise claims to have some such lien, right or interest.

But your orators allege and show that all of the liens, interests, rights or mortgages of each and all of the defendants herein, who are hereinbefore in this paragraph designated and referred to as having or claiming liens, interests, rights or mortgages upon, in or affecting the property, or any part of the property, embraced and included in said first mortgage of the said Union Pacific Railroad Company to your orators as trustees are subsequent, junior and inferior to the lien of the said first mortgage to your orators, and are subject to your orators' rights, interests and liens as trustees thereunder and to the rights, interests and liens of the holders of the bonds secured thereby.

That the defendant S. H. H. Clark is a citizen and resident of the State of Missouri; that the defendant Oliver W. Mink is a citizen and a resident of the State of Massachusetts; that the defendants E. Ellery Anderson and Frederic R. Coudert are citizens and residents of the State of New York, and the defendant John W. Doane is a citizen and resident of the State of Illinois. That said last-named individual defendants are the said receivers heretofore appointed by this honorable court in said Ames cause now pending in this court and hereinbefore recited, and as such receivers and by reason of the fact that as such they claim some right to possess, hold and otherwise administer the property embraced in the mortgage
28 to your orators as trustees (which said mortgage is the subject-matter of this bill), they are made parties defendant to this bill of complaint.

Thirteenth. Your orators further allege and show that this is a suit arising under the Constitution and laws of the United States, and especially under and by virtue of the several acts of Congress hereinbefore referred to; and your orators further allege that the matters in controversy herein exceed the sum of $5,000, exclusive of interests and costs.

Wherefore, and forasmuch as your orators are remediless in the premises under and by the strict rules of the common law, and can have relief only in a court of equity, where matters of this nature are properly cognizable and reviewable, they file this their bill of complaint and pray, the premises considered:

1. That the said mortgage or deed of trust of November 1, 1865, hereinbefore mentioned and described, so executed and delivered by said Union Pacific Railway Company to Edwin D. Morgan and Oakes Ames, as trustees, and of which your orators are successor trustees, may be decreed to be a lien upon all the property—real, personal and mixed—rights, franchises, lands, railroads and telegraphs described in said mortgage and then owned or subsequently acquired by said Union Pacific Railroad Company or the defendant The Union Pacific Railway Company, and that the said defendant, The Union Pacific Railway Company, may be decreed to pay unto your orators all moneys now due or to become due and payable under and by virtue of said mortgage, and of the bonds issued thereunder and secured thereby, and under and by virtue of said agreement or

supplemental indenture of March 12, 1868, executed by said Union Pacific Railroad Company to said original trustees of said first mortgage and their successors. And in default thereof that the said defendants above named, and all persons claiming under them, or either of them, may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the said mortgaged premises, and every part and parcel thereof, and that all and singular the said mortgaged premises with the appurtenances, property and effects, rights, immunities and franchises in said mortgage mentioned, may be sold under a decree of this honorable court, and that out of the money arising out of the sale thereof, after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of the said sale, including attorneys' and counsel fees and the reasonable charges of your orators for services rendered as trustees, and for all expenses incurred by them in the premises, and all payments which may be made for taxes or assessments or otherwise on the said premises, or any part
29 thereof, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall previously have become due, and of the interest which shall at that time have accrued on said principal and be unpaid. And your orators further pray that an account may be taken of the bonds secured by said first mortgage of November 1st, 1865, of which your orators are trustees, and of the amount due on said bonds for principal and interest, or either; and that the names of the lawful holders thereof may be ascertained.

2. That a receiver or receivers may be appointed according to the usual course and practice of this court, with the usual power of receivers in like cases, of all the property, lands, railroad, telegraph and franchises embraced in and covered by said mortgage, and that said receiver or receivers be empowered, instructed and directed to take possession of the railway, rolling stock, telegraph lines and appurtenances, and all extensions and branches thereof, and of all property embraced in said mortgage, and to operate the same and collect and receive the income and tolls thereof, and to account for the net earnings received therefrom (after deducting the expenses of operating the same, and the amount of taxes, assessments and prior charges upon said railroad and property), and to hold and apply the same for the interest and benefit of said bondholders, secured by said mortgage, in conformity with the provisions thereof and as directed by this court. And that the defendants The Union Pacific Railway Company, and the said receivers S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert be decreed to make such transfers or conveyances to said receiver or receivers appointed as herein prayed, and to the purchasers at any sale or sales of all or any part of said property as may be made in conformity with the provisions of said mortgage, or under the decree of this honorable court, which may be necessary and proper to put

such purchaser or purchasers, or either of them, in possession of property so purchased.

3. Your orators further pray that a writ of injunction be issued out of and under the seal of this honorable court by one of your honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining and restraining the said defendants and each of them from interfering with, transferring, selling or disposing of any of the property mentioned in and covered by said mortgage, or from taking possession of, levying upon or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by said mortgages, and that your orators may have such other or further relief in the premises as the nature and circumstances of this case may require and to this honorable court shall seem meet.

4. That your honors may grant unto your orators a writ of subpœna, directed to defendants The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York, J. Pierpont Morgan, Edwin F. Atkins, The Central Trust Company of New York, The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener and Charles T. Peavy, copartners under the firm name and style of F. H. Peavy & Company; The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, thereby commanding each of them, at a certain time and under a certain penalty therein to be named, personally to be and appear before this honorable court, then and there to answer all and singular the matters aforesaid, but not under oath (answer under oath being hereby expressly waived), and to stand to and abide by and perform such order, direction and decree as shall be made herein; and as to your honors shall seem equitable and just.

And as to said parties who are properly defendants to this bill of complaint, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them or either of them parties if they should come within such jurisdiction, or that if they should not come within such jurisdiction such proceedings may be had in regard to such defendants by publication or otherwise to conclude them in this behalf as may be authorized by or according to the form of the statute in such case made and provided.

And your orators as in duty bound will ever pray.

F. GORDON DEXTER,
OLIVER AMES, SECOND,
Complainants,
By WINSLOW S. PIERCE,
R. S. HALL,
Counsel and Solicitors for said Complainants.

31 UNITED STATES OF AMERICA, *District of Massachusetts,* } ss:

F. Gordon Dexter and Oliver Ames, Second, being duly sworn, say that they are the complainants in the foregoing bill of complaint; that they have read the said bill of complaint and know the contents thereof; that the same is true of their own knowledge except as to those matters therein stated to be alleged on information and belief, and that as to those matters they believe it to be true.

F. GORDON DEXTER,
OLIVER AMES, SECOND.

Sworn to and subscribed before me this 15th day of January, 1895.

[SEAL.] JAMES G. HARRIS,
Notary Public.

Indorsed: Filed January 21, 1895.

EXHIBIT "A."

First Mortgage, Union Pacific Railroad Company.

[U. S. revenue stamps, $1,600, cancelled.]

This indenture, made this first day of November, 1865, between the Union Pacific Railroad Company, a body corporate, created by and under an act of the Congress of the United States of America, approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military, and other purposes," party of the first part, and Edwin D. Morgan, of the city of New York, and Oakes Ames, of Easton, in the State of Massachusetts, parties of the second part, witnesseth:

Whereas the said party of the first part is authorized by the said act of Congress incorporating the same, and by the several acts of Congress amendatory thereof, namely, the act approved July 2, 1864, being chapter 216, and the act approved March 3, 1865, being chapter 88, to borrow money for the objects and purposes therein mentioned, and to execute a mortgage to secure the payment thereof, as hereinafter contained, which bonds and mortgage by said acts of Congress are made the first lien, and unto it the lien of the Government bonds is subordinate; and whereas, for such objects and purposes, said party of the first part is desirous of borrow-

ing a sum of money which shall be equal to the amount per mile of United States bonds, provided by said acts to be issued to said company, for each and every mile of its said railroad com-
32 pleted and to be hereafter completed, and of securing the payment of its corporate bonds to be issued and negotiated therefor by a mortgage to said parties of the second part, as trustees, as hereinafter provided and set forth; and

Whereas, under and pursuant to lawful authority conferred by said several acts of Congress, all of which are hereby declared to be taken as a part of this instrument, the said party of the first part has determined to make, execute, issue, negotiate, and deliver under its corporate seal its corporate bonds, from time to time, and severally payable to bearer, for the sum of $1,000 each, thirty years after the date thereof, with semi-annual interest at the rate of six per centum per annum from the date thereof, to an amount equal and not exceeding per mile the amount provided to be issued by the Government of the United Stares to aid in the construction of said railroad, each of said bonds to be issued to bear date of the time of its issue and to be in form and be certified and have coupons annexed, as follows:

UNITED STATES OF AMERICA.

First-mortgage Bonds.

The Union Pacific Railroad Company acknowledges itself indebted to the bearer hereof in the sum of one thousand dollars, which sum the said company promises to pay unto the holder hereof, at its office in the city of New York, thirty years after the date hereof, and also interest thereon at the rate of six per centum per annum, payable semi-annually from the date hereof, in lawful money of the United States, until the principal sum be paid, on presentation of the annexed interest coupons at the office of the company in the city of New York.

In testimony whereof the said company has hereunto caused to be affixed its corporate seal and these presents to be executed by its president and treasurer, at the city of New York, this — day of ——, A. D. one thousand eight hundred and ——.

—— ——, *President.*

—— ——, *Treasurer.*

We, the undersigned trustees, do hereby certify that the above bond is issued by virtue of authority granted to the Union Pacific Railroad Company by the acts of Congress of the United States, approved July 2, 1864, ch. 216, and March 3, 1865, ch. 88, and is of similar tenor except as to the date, and of like amount with the other bonds issued and to be issued under the said acts of Congress; that the said company has executed to us a mortgage, dated
33 November 1, 1865, purporting to convey to us the entire railroad and telegraph line of said company, with its equipment and appurtenances, for the benefit of the holders of said bonds, and to secure the payment thereof; that the said mortgage has been

recorded in every county through or in which the said road has been permanently located, and a certified copy thereof filed in the office of the Secretary of the Interior at Washington, and that the same is a first lien upon the line of the said company's road, and that no more such bonds have been certified by us than are authorized by the said acts of Congress.

—— ——,
—— ——,
Trustees.

(*Coupon.*)

The Union Pacific Railroad Company will pay bearer, at its office in the city of New York, thirty dollars, on the — day of ——, being interest due that day on its bond No. —.

—— ——, *Treasurer.*

And whereas, said party of the first part has further determined, under and pursuant to authority so conferred by acts of Congress as aforesaid, to execute and acknowledge, under its corporate seal, and deliver to said parties hereto of the second part, a mortgage conveying, assigning, and transferring to them, in trust, all the corporate, real and personal property, franchises and effects hereinafter specifically described, as security for the payment of the said bonds so to be issued, and the interest to grow due thereon, and that said mortgage should contain all and singular the covenants and conditions hereinafter set forth, and should bear date the first day of November, 1865:

Now, therefore, this indenture witnesseth, that the Union Pacific Railroad Company, party of the first part, under and pursuant to and by virtue of the express authority of the said several acts of Congress as aforesaid, and for and in consideration of the premises, and for the purpose and with the intent of better and more effectually securing the payment of said bonds to be issued as aforesaid, with the interest due and to grow due thereon, and for and in consideration of one dollar lawful money of the United States of America, by the said parties of the second part hereto fully and truly paid to the said party of the first part, the receipt whereof is hereby acknowledged, hath bargained, sold, assigned, transferred, and set over, enfeoffed, conveyed, and confirmed unto the said Edwin D. Morgan and Oakes Ames, the said parties of the second
34 part, as trustees, and in trust, and to the survivor of them, and to their successor or successors, all and singular, the railroad and telegraph of the said party of the first part, heretofore constructed, or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said acts of Congress, to wit, at the city of Omaha, in the Territory of Nebraska; thence, as provided in said acts of Congress, through the territories of the United States to the western boundary of the late Territory of Nevada, together with all its lands, tenements, hereditaments, rights of way, and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated,

for the purpose of a right of way for a single, double or other track, railroad and telegraph line, and for depots, engine-houses, car-houses, station-houses, warehouses, machine shops, superstructures, erections, and fixtures being necessary for the use of said railroad or telegraph; and all and singular the franchises, now owned, (*pos-*) possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described, and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine shops, workshops, and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad and telegraph line, or the running and operating the same.

To have and to hold all and singular the premises, rights, franchises, lands and property, real and personal, hereinbefore and hereby assigned, mortgaged, pledged and conveyed, or intended to be, and every part and parcel thereof, with all the appurtenances unto the same belonging, or in anywise appertaining, unto the said Edwin D. Morgan and Oakes Ames, parties of the second part, and their survivor, successor or successors, and his or their assigns, in trust for the person or persons, firm or firms, bodies politic or corporate, who have heretofore or who shall hereafter at any time become the purchasers, or holders, or owners of any or either of said bonds so to be issued as aforesaid, and subject to the terms, provisions and conditions in said bonds contained, and subject also to the provisions and conditions of said acts of Congress, and also subject to the possession and management of said railroad and telegraph line and property by said party of the first part and its assigns, so long as no default shall be made in the payment of either the interest or principal of the said bonds so to be issued, or any of them, and so long as said party of the first part shall well
35 and truly observe, keep, and perform all and singular, the covenants, agreements, conditions and stipulations in this indenture contained and set forth, and which are to be observed, kept, and performed by and on the part of the said party of the first part.

And the said Union Pacific Railroad Company, the party of the first part, covenants and agrees to and with the said parties of the second part, that it shall and will pay, or cause to be paid, all taxes, charges, rates, levies, and assessments imposed, assessed, or levied, or which may hereafter be imposed, assessed or levied upon the premises, lands, franchises and property hereby mortgaged, conveyed and assigned, or intended so to be; and shall and will, at its own proper cost, charge and expense, do, or cause to be done, all the acts and things necessary or proper to be done or performed, in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid lands and premises, property and franchises hereby created; and, further, that the said party of the first part shall and will not, at any time hereafter, or in any way or manner, interfere, or avail itself of any extension laws, appraise-

ment laws, or any other laws of the States or Territories through which the said road shall pass, now in force or hereafter to be enacted and in force in said States or Territories, which would alter, affect or impair, or which are or which may be designed, intended or construed to alter, affect or change the rights and interests of the said parties of the second part, as herein declared, or which shall in any way impede or obstruct the mode or manner of realizing, perfecting or enforcing the rights and interests of any of the owners or holders of said bonds so to be issued as aforesaid, or which shall affect, change or alter the time, place, mode, means or manner of perfecting, enjoying or enforcing any of such rights or interests, as the same are herein declared; and also that the said party of the first part shall and will, at any time or times hereafter, and from time to time, execute, acknowledge and deliver, under its corporate seal, to the said parties of the second part, and the survivor, successor or successors thereof, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing, and shall and will do and perform all such other or further acts or things as shall or may be necessary or proper, or as their counsel learned in the law shall deem necessary, proper or expedient for the better or more effectually securing upon the above-mortgaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon, in manner aforesaid, or for carrying into effect the true intent, design, objects, and purposes of these presents, or making, preserving, continuing and keeping valid and effectual the lien and
36 incumberance created, or intended to be created, by the execution, delivery and recording of this indenture, upon the property real and personal, rolling stock, equipments, franchises and effects hereinbefore particularly described.

This indenture further witnesseth, that the said Union Pacific Railroad Company, the party of the first part, by these presents further covenants and agrees to and with the said parties of the second part hereto, and the survivor or survivors of them, and their and his successor or successors, as trustees, in manner and form following, that is to say—

First. That the said Union Pacific Railroad Company, the party hereto of the first part, shall and will well and truly pay the said sums of money secured in and by said bonds so to be issued, as herein provided, together with the semi-annual interest to become due thereon, at the rate of six per cent. per annum, at the times, in the manner and at the place specified therein respectively.

Second. That no greater amount of bonds shall be issued or put in circulation under the provisions of this deed than the sum or amount authorized to be issued by the act of Congress aforesaid, nor shall any such bonds be issued before the same lawfully may be issuable in pursuance of said acts.

Third. If any default shall be made in the payment of any of said bonds or coupons, at the time and place when the same shall become payable, and such default shall continue for six months thereafter, then the said trustees, on the request in writing of holders

of a majority of such bonds, then in force and so in default, may and shall forthwith enter into and take possession of all and singular the said mortgaged property, rights and franchises, and use, operate and manage the same for the benefit of the holders of all said bonds; and if such default shall continue for the space of one year from the (*the*) time of the happening of such default, then said trustees, upon the request in writing of the holders of a majority of all said bonds then outstanding, may and shall offer for sale, and sell, all and singular, the said mortgaged property, rights, and franchises, or so much thereof as may be necessary, at public auction, first giving notice of such sale by advertisement in one or more newspapers published in the city of New York, for a period of ninety days, and otherwise proceeding according to the statutes in such case made and provided; and as the attorneys of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, may and shall make and deliver, to the purchaser or purchasers on said sale, a good and sufficient deed or deeds of conveyance in the law of the lands and
37 real property so sold, in fee-simple, and of all other property, rights, franchises, and privileges so sold, by such full, perfect, and effectual title and estate as the nature of the things sold shall admit and allow, and all proceeds of said mortgaged property, rights, and franchises, which shall be realized by the management or operation thereof, or the sale thereof, provided for in this third clause, after deducting all necessary and proper costs, expenses, charges, and commissions of said sale, and all the other expenses and disbursements of the said trustees in their proceedings, shall be applied by said trustees to the payment of the moneys then owing for principal and interest upon such of said bonds as shall then remain in force, whether due or to become due, and without preference, and the surplus, if any, shall be paid by them to the said party of the first part, its successors or assigns.

And in case of the said trustees entering and taking possession as aforesaid, then at any time afterwards, but before such sale as aforesaid, upon the payment and satisfaction of all sums then payable on said bonds for interest, and all costs, expenses, and charges incurred or accrued by reason of such entry, possession, and use, and the operating and using of the property by the said trustees, they, the said trustees, shall relinquish and restore the premises to the said party of the first part, to be held subject to these presents in like manner as if such entry had not been made.

And whensoever the said trustees shall be in possession by means of any such entry, they shall have full power to run and operate said railroad, and to do and carry on the business of the corporation, party of the first part, including repairs, for the benefit of the holders of said bonds under the trusts by these presents declared, in such manner as the said trustees shall deem discreet and advisable.

And for all services rendered by the said trustees in performance of any duty whatsoever under and by virtue of these presents, they shall be entitled to receive from the party of the first part, or from

and out of the said property or its proceeds, a fair and proper compensation.

This indenture further witnesseth, that these presents are upon the express condition, that, upon the payment of all the bonds so issued and to be issued in full and the interest due thereon, then these presents, and the estate hereby granted, shall cease and determine; and the said party of the first part, its successors and assigns, shall thereupon be immediately and fully reinvested with said premises, franchises, and property hereby granted in law and in fact, without any entry or other act whatsoever.

38 It is further agreed, that no one of the said trustees, their survivor or successors, shall be answerable for the acts, omission, or defaults of the other, nor for anything short of gross negligence or willful default in the discharge of his duties.

And this indenture further witnesseth, that this trust, and the security hereby intended, extends only to such bonds of the party of the first part as shall be certified by the said trustees, or the survivors of them, and his and their successor or successors, and when all such bonds shall be satisfied and discharged, the trusts herein and hereby created shall cease.

This indenture further witnesseth, and it is hereby expressly agreed, that in case of the death, resignation, incapacity, or removal of any or either of the parties of the second part, then it shall and may be lawful, and the remaining, acting, surviving, or competent trustee, and the party of the first part, are hereby jointly empowered to elect and appoint, by an instrument in writing duly executed by each of such parties, a competent person to fill the vacancy created in manner aforesaid, and that such person so appointed trustee, on his acceptance of such appointment, shall have and possess and be vested with the same rights and powers as trustee as he would have had and possessed or been vested with had he been originally made a party of the second part hereto, and shall perform the same duties in all respects; and until such appointment shall be so made in manner aforesaid, and notwithstanding any vacancy as aforesaid, said remaining, surviving, acting or competent trustee shall have full power and authority to execute each and all the trusts hereby created; and his acts in the premises shall be as legal, valid and effectual in all respects and to all intents and purposes as if the same had been done and performed by both the parties hereto of the second part.

And if for any reason the said surviving trustee and the party of the first part hereto should fail to unite in the appointment of a trustee, as before required, within the space of thirty days after such vacancy occurs, then and in that case it shall be the duty of the secretary of the company to call a meeting of the bondholders, by printed notice published in two of the public newspapers in the city of New York, calling such meeting of the bondholders to be held in said city, not less than thirty days after the first publication of said notice, for the purpose of filling such vacancy.

At the time and place specified in such notice the holders of said bonds, at such meeting, shall proceed to elect a suitable person to

act as such trustee to fill said vacancy; and a majority in
39 interest of said bondholders so attending said meeting, or legally represented thereat, shall be competent to elect a new trustee; and the person so elected shall immediately, on such election and on his acceptance in writing of such trust, become vested with all the estate, trust rights, powers and duties of the trustee in whose place he shall have been elected.

And in case said appointment shall be made in manner aforesaid, or in case of such election as aforesaid, the said party of the first part hereby covenants to make, execute and deliver such other or further instruments, deeds, indentures or assurances as may be necessary to enable the person or persons so appointed or elected to execute the trusts hereby created and declared as fully and perfectly in all respects as he or they could have executed the same if originally made a party or parties of the second part to this indenture.

Notice of the appointment or election of every new trustee shall be given to the Department of the Interior.

It is further agreed that it shall be the duty of the said trustees to certify as aforesaid and deliver immediately to the said party of the first part all such bonds as by the said acts of Congress may lawfully be issued from time to time, as the same shall become issuable, to be held or used by the said party of the first part.

In witness whereof, the said Union Pacific Railroad Company, the party of the first part, has caused these presents to be subscribed by its president and attested by its secretary, and has caused its corporate seal to be hereunto affixed; and the said parties of the second part, for the purpose of signifying their acceptance of the trusts herein and hereby created have hereunto subscribed their names and affixed their seals the day and year first above written.

[L. S.] JOHN A. DIX,
President Union Pacific Railroad Company.

Attest: CH'S TUTTLE,
Secretary Union Pacific Railroad Company.

Subscribed, sealed and delivered
in the presence of—
By E. D. MORGAN. E. D. MORGAN. [L. S.]

Witness-:
CHAS. TRACY.
JOHN I. DAVENPORT.

By OAKES AMES. OAKES AMES. [L. S.]
Witness-:
CHAS. TRACY.
AMASA COBB.

By J. A. DIX AND
C. TUTTLE.

Witness-:
CHAS. TRACY.
CHARLES NETTLETON.

DISTRICT OF COLUMBIA, }
Washington County, } 88 :

I, John F. Callan, a commissioner for the Territory of Nebraska, residing in Washington, in the county of Washington and District of Columbia, do certify that on the 13th day of December, in the year 1865, at Washington, in the District aforesaid, before me personally appeared Charles Tracy, who being by me duly sworn, did depose and say that he resides in the city of New York, in the State of New York; that he was one of the subscribing witnesses to the execution of the foregoing deed; that he knew Edwin D. Morgan and Oakes Ames, the persons described in and who executed the said deed; that he saw said Morgan and the said Ames sign, seal, and deliver the same; and they acknowledged to him that they executed the same; and that he, the said Charles Tracy, thereupon became the subscribing witness to the execution of the said deed, which is to me satisfactory evidence of the due execution of said deed.

In witness whereof, I have hereunto set my hand and official seal, at Washington, in the county of Washington, in the [L. S.] District of Columbia, this 13th day of December, in the year 1865.

[U. S. revenue stamp, 5 cents, cancelled.]

JOHN F. CALLAN,
A Commissioner for Nebraska.

STATE OF NEW YORK, }
City and County of New York, } 88 :

Be it remembered, that on this fifteenth day of December, A. D. one thousand eight hundred and sixty-five, before me, Charles Nettleton, a commissioner of the Territory of Nebraska, in and for the State of New York, duly appointed and commissioned by the governor of said Territory, duly sworn and dwelling in said city of New York, personally appeared John A. Dix, the president of the Union Pacific Railroad Company, and Charles Tuttle, the secretary of the same company, to me respectively known, who being by me severally duly sworn, did depose and say that he, the said John A. Dix, resided in the city, county and State of New York, and that he, said Charles Tuttle, resided in Rye, in the county of Westchester, in the State of New York; that he, said John A. Dix, was the president, and he said Charles Tuttle, was the secretary, of said Union Pacific Railroad Company; that they each knew the corporate seal of the said company; that the seal affixed to the foregoing indenture was such corporate seal; that the said corporate seal was so affixed by the order of the board of directors of said company, and with the assent and authority of the stockholders thereof;
41 and that the said John A. Dix, as such president as aforesaid, subscribed the said indenture; and the said Charles Tuttle, as such secretary as aforesaid, attested the same by subscribing his name thereto, by the like order and authority; and they the said John A. Dix and Charles Tuttle, acknowledged to me that they

executed the same indenture in manner aforesaid, as the act and deed of the said Union Pacific Railroad Company.

[L. S.] In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year above written.

CHARLES NETTLETON,
Commissioner for the Territory of Nebraska in New York.

[U. S. revenue stamp, 5 cents, cancelled.]

Similar certificates follow for the Territories of Dakota, Colorado, Utah, and State of Nevada.

EXHIBIT "B."

Agreement.

Union Pacific Railroad Company with Edwin D. Morgan and Oakes Ames, trustees. } Dated March 12, 1868.

Providing for the payment of the principal of the first-mortgage bonds in gold coin at maturity.

Know all men by these presents, that whereas the Union Pacific Railroad Company heretofore executed to Edwin D. Morgan and Oakes Ames, trustees, a certain indenture of mortgage bearing date the first day of November, one thousand eight hundred and sixty-five, mortgaging thereby the railroad of the said company to the said trustees to secure the payment of the said company's first-mortgage bonds, and the said indenture of mortgage was duly recorded; and

Whereas, the said company has issued divers of the said first-mortgage bonds and intends hereafter to issue divers other of said first-mortgage bonds, mentioned in and provided for by the said indenture of mortgage; and

Whereas, by the tenor of the said bonds the principal sums payable thereon at maturity is to be paid in lawful money of the United States.

Now in consideration of the premises, and of one dollar to the said company in hand paid, the receipt whereof is hereby
42 acknowledged, and for divers other good and valuable considerations the said company thereunto moving, the said company hereby covenants and agrees to and with the said Edwin D. Morgan and Oakes Ames, as trustees for the benefit of all who are or shall be holders of said bonds, and to and with the successors of said trustees in the trust created by the said indenture of mortgage; that the principal of all the said first-mortgage bonds being one thousand dollars each as well such as have been issued hitherto as such as shall be issued hereafter, shall and will be paid by the said company, whensoever the same respectively become payable, according to the tenor thereof, in the gold coin of the United States at par, that is to say, one thousand dollars of such coin for each of the said bonds.

In witness whereof the said company has caused these presents to be sealed with its corporate seal and to be subscribed by its president and treasurer this twelfth day of March, one thousand eight hundred and sixty-eight.

[SEAL.] (Signed) OLIVER AMES, *President.*
(Signed) JOHN J. CISCO, *Treasurer.*

Sealed and delivered in the presence of—
(Signed) BENJAMIN F. HAM.

EXHIBIT "C."

Order Appointing Receivers.

(Title and caption omitted.)

Upon reading and considering the verified bill of complaint in this cause and the answer of the defendant The Union Pacific Railway Company this day filed, and on motion of counsel for the complainants the defendant The Union Pacific Railway Company appearing by counsel and assenting thereto, and each of the other defendants appearing by counsel and assenting hereto,

And due deliberation being therein had, it is—

Adjudged, ordered and decreed by the court that S. H. H. Clark, of St. Louis, and Oliver W. Mink of Boston, and E. Ellery Anderson of New York, be and they are hereby appointed receivers of this court of all and singular the said defendant The Union Pacific Railway Company and of all the railroads and assets described in the bill of complaint herein, the same being the system of railways now in the possession of and owned, operated, leased or controlled by, for, or in the interest of the said corporation, the Union
43 Pacific Railway Company, situated in the States of Nebraska, Iowa, Kansas, Colorado, Missouri, Wyoming, Montana, Idaho, Washington, Nevada, Oregon, New York, Massachusetts, and the Territories of Utah and New Mexico, and all the property of said Union Pacific Railway Company, and of each of said companies, real, personal, and mixed, of whatever kind and description and wherever situated, whether described in the bill of complaint or not, including all equipments, locomotives, cars and other rolling stock, boats, steamships, ships, docks, piers, floats, machinery, tools, material, shops, coal yards and fixtures, coal on hand and supplies now owned, held or in possession and use for such corporations and wherever situated, and including all track, terminal facilities, real estate, warehouses, offices, stations and all other buildings of every kind owned, held or possessed by said companies together with all telegraph lines and the appurtenances thereto; and also all the moneys, books of account, contracts of every kind, debts, things in action, bonds, stocks, securities, deeds, leases, leasehold interests, beneficial muniments of title, bills receivable, rents, profits and income of the premises accruing and to accrue, as well as all franchises, rights, easements and privileges of said Union Pacific Railway Company, and of each of said companies.

That the said receivers be, and they are hereby, fully authorized and directed to take immediate possession of all and singular the railroads and property above described or referred to, wherever situated or found, and continue the operation of said railroad and water system and every part thereof, and to run, manage and operate the said railroads and such other railroads as said Union Pacific Railway Company holds, controls or operates under lease, contract or otherwise, and has heretofore run and operated, or which have been or are being operated by, for or in the interest of the Union Pacific Railway Company as part of its system, and to exercise the authority and franchises of the said company and conduct systematically the business and occupation of a common carrier of passengers and freight, and discharge all of the public and governmental duties obligatory upon said railway corporation or upon any of the other corporations whose lines of road are now in the possession of and operated by, for or in the interest of said Union Pacific Railway Company; and to preserve the said property in proper condition and repair, so that it may with safety and most advantageously be used, and to protect the title and possession of the same, and to employ such persons and make such payments and disbursements as may be needful or proper in so doing.

Each and every of the officers, directors, agents or employees
44 of the said Union Pacific Railway Company and of each of the defendants, and all other persons and corporations soever, as well as each of the defendants, are hereby required and commanded forthwith to turn over and deliver to such receivers, or their duly constituted representatives, any and all railroads, property, books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, or other property in his or their hands, or under his or their control; and each and every of such directors, officers, agents, persons or corporations are hereby commanded and required to obey and conform to such orders as may be given them, from time to time, by the said receivers, or their duly constituted representatives, in conducting the operations of said property and in discharging their duties as such receivers; and each and every of such officers, directors, and employees of the said Union Pacific Railway Company, and of each of the defendants, and all other persons and corporations soever, are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties or operating the same under the court's order.

Said receivers are hereby fully authorized to operate the said system of railroads so owned, leased, operated or controlled by or for or in the interest of the said Union Pacific Railway Company, and manage all other property of such corporation at their discretion and in such manner as will in their judgment produce the most satisfactory results consistent with the discharge of the public duties imposed thereon, and to collect and receive all the income therefrom and all the debts due said companies of all kinds; and for such purpose are hereby vested with full power at their discretion

to employ and discharge, and fix the compensation of all such officers, attorneys, managers, superintendents, agents, and employees, to aid in the proper discharge of their duties; and they and each of them shall have power, with the sanction of the court, to redeem any and all of the securities of the company now pledged as security on loans of money, and they shall have power with the saction of the court first had to borrow money, if needful in their judgment in order to comply with this direction, and also so far as may be needful to pay all operating expenses and for current necessities for labor and supplies, but for no other purpose without the further order of this court.

Said receivers are fully authorized and empowered to institute and prosecute all such suits as may be necessary in their judgment for the proper protection of the property and trusts hereby
45 vested in them; and to likewise defend such actions instituted against them as such receivers, and also to appear in and conduct the prosecution or defense of any suit now pending in any court against The Union Pacific Railway Company, the defendants or any of them, or any of the companies embraced in the Union Pacific system or operated by, for or in the interest of said system, the prosecution or defense of which will, in the judgment of said receivers, be necessary for the proper protection of the property placed in their charge for the interests and rights of creditors connected therewith.

Said receivers are hereby directed to deposit the moneys coming into their hands in some banks in New York city, Boston and Omaha, and such other cities or places as may be necessary or convenient, and report to the court what banks they have so selected.

It is hereby further ordered, adjudged and decreed that out of the moneys that shall come into the hands of said receivers from the operation of said railway properties or otherwise they shall:

1st. Pay all current expenses incident to the creation or administration of this trust and to the operation of said railway or railroads and properties.

2d. Pay all sums due or to become due connecting or intersecting lines of railroads arising from the interchange of business, and for track service of other railroads used by said Union Pacific Railway Company or system in the operation of its lines, traffic and car mileage, balances and all amounts now due from said Union Pacific Railway Company or roads and properties constituting part of its system for taxes and assessments upon the property or any part thereof.

3d. Pay the amounts due to all operatives, employees, attorneys and agents of said company for any service rendered said company or companies within six months prior to the allowance of this order.

4th. Pay all amounts due for supplies and material contracted for or purchased or delivered or used in operating said railway or railroads, or by said company or companies for supplies furnished to laborers and credited against their labor within six months prior to the allowance of this order.

5th. And all amounts due from said railway company or companies for or on account of the rental or compensation for railway lines, property or rolling stock.

6th. The money belonging to the defendants and each
46 company constituting part of the said system, except as heretofore directed, shall be held by said receivers until they are authorized to dispose of the same under the order or decree of this court.

7th. And said receivers are further authorized, in case it is proper in their judgment, with the sanction of the court, to use any balance of funds arising from the operating of said railroads, for the purpose of protecting such of the real and personal property as aforesaid under lease, sale, pledge, mortgage or contract.

It is further ordered that the said receivers shall retain possession and continue to discharge the duties and trusts aforesaid until the further order of this court in the premises, and that they shall, from time to time, make report to this court of their doings in the premises, and may, from time to time, apply to this court for such other and further order and direction as they may deem necessary and requisite to the due administration of said trust; and said receivers are vested, in addition to the powers aforesaid, with all the general powers of receivers in cases of this kind, subject to the supervision of this court.

It is further ordered that an injunction be issued against the defendants, and all other persons claiming to act by, through or under them, and all other persons, to restrain them from interfering with the receivers further taking possession of and managing said property.

Said receivers are hereby further required, within twenty days from this date, to file with the clerk of this court a proper bond, with sureties to be approved by the clerk of this court or a judge thereof, each in the penal sum of fifty thousand dollars, conditioned for the faithful discharge of their duties, and to account for all funds coming into their hands, according to the order of this court.

ELMER S. DUNDY, *Judge.*

October 13, 1893.

EXHIBIT "D."

Order Appointing Receivers.

(Title omitted.)

Upon reading and considering the verified bill of complaint in this cause, and the answer of the defendant The Union Pacific Railway Company, and upon further reading and considering the petition of Richard Olney, Attorney General of the United States, for the United States, this day presented, and upon motion of George
Hoadly, special assistant to the Attorney General in the
47 premises, the complainants and defendants appearing by counsel and assenting hereto, and due deliberation being therein had, it is—

Ordered, adjudged and decreed by the court that John W. Doane, of Chicago, Illinois, and Frederic R. Coudert, of New York city, be, and they are hereby appointed additional receivers of this court, of all and singular the said defendant The Union Pacific Railway Company, and of all the railroad property and assets described in the bill of complaint herein, and more particularly described in the order of this court heretofore entered in this cause, appointing S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson, receivers, reference thereto being hereby had and made, and the said additional receivers hereby appointed are required within thirty days from this date to file with the clerk of this court a proper bond, with sureties to be approved by the said clerk or the court, each in the penal sum of fifty thousand dollars, conditioned for the faithful discharge of his duties and to account for all funds coming into his hands according to the order of this court; and it is further—

Ordered, adjudged and decreed, that all provisions of all former orders of this court herein shall apply, so as to authorize and govern the said additional receivers, viz: John W. Doane and Frederic R. Coudert, hereby appointed, so that said additional receivers, viz: John W. Doane and Frederic R. Coudert, acting and co-operating with said receivers Clark, Mink and Anderson, shall have all the powers granted to and perform all the duties imposed upon the said receivers, Clark, Mink and Anderson by the former orders of this court, as fully and to the same effect as if the original orders of this court appointing the said Clark, Mink and Anderson as such receivers, had embraced the names of five receivers instead of three, namely, of the said Doane and Coudert, in addition to the said Clark, Mink and Anderson.

Moneys to be realized in operating roads described in bill over the above amounts necessary to pay operating expenses and repairs and purchasing necessary material, etc., as well as for the payment of new machinery, etc., to be held and retained by the receivers until otherwise ordered by the court. This order not to interfere with orders directing payment of other claims now made.

ELMER S. DUNDY, *Judge.*

Indorsed: Filed Jan. 21, 1895. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 24th day of June, 1895, separate answer of the Union Pacific Railway Company was
48 filed in said case, which said separate answer is in the words and figures following, to wit:

In the Circuit Courts of the United States for the Districts of Nebraska, Iowa, Colorado, and Wyoming and in the Third District Court of Utah Territory.

(Title of cause omitted.)

Separate Answer of the Union Pacific Railway Company to the Bill of Complaint Herein.

This defendant saving and reserving to itself all manner of benefit or advantage of exception or otherwise that may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering saith as follows:

1. This defendant admits that the complainants herein have in their said bill truly and correctly stated the citizenship and residence of the several parties to said bill, both complainants and defendants, and have also truly stated therein the manner in which and the time when this defendant was incorporated and the authority of law under which this defendant was created, and that they have therein also truly described the lines of railroad owned, constructed and operated by this defendant, and also that said receivers of said defendant, The Union Pacific Railway Company, as mentioned and described in the said bill of complaint are correctly named therein, and the dates of their appointment, the suit in which they were appointed and their several places of residence are also therein correctly stated and alleged.

And further, this defendant admits all and singular the several allegations in the first paragraph of complainants' said bill mentioned, except it states as follows:

That while said The Union Pacific Railway Company has and maintains a general office and place of business in the city of Omaha, State and district of Nebraska, it is also true, that as required by the law of its organization, the Union Pacific Railway Company has and maintains its principal office and place of business at Boston, in the State of Massachusetts. And this defendant prays that it may have leave to refer to each and every act of Congress in said first paragraph of said bill mentioned with the same force and effect as if the said acts of Congress were herein set out at length; and that it may hereafter refer to any of the several acts of legis-

49 lation of either the Territories of Kansas or Colorado, or to the acts of legislation of the States of Colorado or Kansas which it may be advised are or may become material to it of and in respect to any of the matters alleged against this defendant in said bill of complaint.

2. For answer to the second paragraph of complainants' said bill this defendant admits each and every allegation contained in said second paragraph; but it also prays leave that it may from time to time refer to the said acts of Congress in said paragraph mentioned with the same force and effect as if each and every part or section thereof were herein specially pleaded, and that it may also from

time to time, as it may be advised, by proper allegations and by way of amendment to this, its answer, allege of and concerning any of said matters or things material or necessary for it to plead or answer for a full and complete statements of the rights, duties and obligations of the parties hereto and as may be necessary to make a full and complete showing of the rights, privileges and obligations of the complainants herein and of the mortgage indebtedness which they, under the terms of the said instrument represent.

This defendant specially submits to the court all and singular each of the several sections of the respective acts of Congress under and by virtue of which, as complainants allege, this defendant's predecessor, the Union Pacific Railroad Company, was authorized to make contracts, to borrow money and to make, execute and deliver mortgages, and also all of those acts under and by virtue of which the aid granted to the said Union Pacific Railroad Company was furnished by the United States of America, so that each and every of the terms and conditions of the said several acts of Congress may be inspected by the court and its determination had as to each and every of the matters in complainants' bill alleged, by virtue of which any right or claim of the Government of the United States as against the property of this defendant is supposed to exist; all of which several acts of Congress aforesaid this defendant submits to the court as a part of the controversy herein.

3. For answer to the third paragraph of complainants' bill this defendant admits that, pursuant to the provisions of the congressional legislation in complainants' bill alleged, the President of the United States, by executive orders, dated November 17, 1863, and March 7, 1864 (copies of which executive orders this defendant prays leave to hereafter present and submit as a part of this its answer), duly fixed the eastern terminus of the Union Pacific
50 railroad on or near the Iowa bank of the Missouri river, the point of location so fixed by said executive orders this defendant prays may be determined by the terms of such executive orders hereinbefore referred to.

And further this defendant saith that it is true as alleged that prior to the consolidation of the said Union Pacific Railroad Company with the other companies forming this defendant, said Union Pacific Railroad Company constructed and completed its line of railroad and telegraph with the appurtenances thereto belonging from Council Bluffs, in the State of Iowa, westerly through the States (then Territories) of Nebraska, Colorado and Wyoming, and into the Territory of Wyoming forming a connection with the railroad of the Central Pacific Railroad Company at a point about seven miles (not five) west of Ogden, in said Territory of Utah, a distance of 1,042.93 miles; but this defendant says that it is not true that said line as opened and operated included the bridge over the Missouri river between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska, which said bridge, this defendant alleges, was constructed and first operated about the year 1871 or 1872, long after the completion and construction of the remainder of the said railroad from Council Bluffs to Ogden, as aforesaid—pending the

construction of which said bridge the crossing of the said Missouri river and connections with railroads east thereof, was made by ferry-boats and other facilities then in use.

It admits that all of its line of railroad and telegraph and the bridge aforesaid were constructed under and by virtue of, in the time and manner and upon the conditions prescribed by the several acts of Congress of the United States passed of and in respect to the several matters of construction as therein alleged; and it submits all of the said facts in respect to the construction of the said railroad, telegraph, bridge and appurtenances to the court as well as the laws of Congress passed in respect to the said Union Pacific Railroad Company and prescribing its rights, powers and duties, as well as those acts conferring upon it the privileges in respect to the construction of the said bridge for the determination of this court as to whether or not each and every part or what part, of said line of railroad, telegraph, bridge and appurtenances are subject to, embraced and included in the said first mortgage of the Union Pacific Railroad Company of November 1st, 1865, of which, in fact, the complainants are trustees as in said bill alleged—this defendant not admitting or denying the allegations in respect thereto as alleged by complainants in their said bill.

4. For answer to the fourth paragraph of complainants' bill this defendant admits that the bonds issued by said Union Pacific
51 Railroad Company are therein as to their date and tenor correctly described, so that a true copy of the said bonds (the serial numbers thereof alone excepted) is shown in the first mortgage in said paragraph mentioned, and that a true copy thereof is set out in and as a part of said Exhibit "A" attached to the complainants' bill, but this defendant leaves the complainants to their proofs as to the corporate action of the said Union Pacific Railroad Company alleged by complainants to have been made of and in respect to the determination of said company to issue said bonds.

It admits further that said Union Pacific Railroad Company did make, execute, issue at the time and in the manner in said fourth paragraph alleged 27,229 of its said mortgage bonds to the gross aggregate amount of $27,229,000, all of which bonds are correctly described in the said fourth paragraph.

5. For answer to the fifth paragraph of complainants' bill this defendant admits that said Union Pacific Railroad Company did on or about the first day of November, 1865, make and execute under its corporate seal the said first mortgage in said fifth paragraph mentioned and described and delivered the same to the said Edwin D. Morgan and Oakes Ames as trustees, and that in and by the terms of said mortgage the said Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm unto the said trustees as such and in trust for the uses and purposes in said mortgage mentioned and described, and to the survivor of them, and to their successor or successors, all and singular the said properties, rights, privileges and franchises of said company fully and particularly described in said instrument itself—a true copy whereof this defendant admits is attached to the com-

plainants' said bill, marked Exhibit "A" and is made a part thereof. And this defendant expressly refers to the said instrument itself for a true and correct description of all the property therein and thereby conveyed or sought to be conveyed to the said trustees, referring not only to that portion of said mortgage as to said matter quoted and referred to in the said fifth paragraph of complainants' bill, but this defendant submits the whole of the said mortgage and all its terms and conditions of and in respect to said matter for its statement of that which was conveyed or charged by said instrument.

6. For answer to the sixth paragraph of complainants' bill this defendant hath not sufficient knowledge or information thereof to expressly admit or deny the allegations of the said bill of and in respect to the said agreement or indenture supplemental to
52 said first mortgage, and therefore, of and in respect thereto, this defendant leaves the complainants to their proofs, submitting to the court, however, to determine from said instrument itself, as well also as from the congressional legislation in complainants' bill referred to and to the several other acts of the Congress of the United States of and in respect to this defendant and its predecessors to determine whether or not it was within the corporate competency and power of the said Union Pacific Railroad Company at that or at any other time since then to have made, executed, acknowledged and delivered said agreement or indenture supplemental mentioned and described in said sixth paragraph of complainants' bill or any other agreement wherein or whereby the said Union Pacific Railroad Company or its successors bound or charged itself or its successors with the payment of the said sum of money mentioned in said bonds in any other money than the lawful money of the United States. Whereby, and it submits to the court for its determination under such legislation, whether or not the said matters so stamped or caused to be stamped upon said bonds or any of them was sufficient to charge this defendant with the payment of the said sum of money in said bonds mentioned and described in any other than the lawful money of the United States.

This defendant admits that Exhibit "B" thereto attached is a true copy of the said agreement or supplemental indenture in said sixth paragraph mentioned.

7. For answer to the seventh paragraph of complainants' bill this defendant admits each and every allegation therein contained in manner and form as therein alleged.

8. For answer to the eighth paragraph of complainants' bill this defendant states, upon information and belief, that it is true there were issued and remain yet outstanding the number of 27,229 of said first-mortgage bonds and that all of the same yet remain outstanding; that all of any said bonds were duly certified by the trustees, and further, that said bonds so issued and outstanding bear date and mature respectively at the dates and at the times in said eighth paragraph of complainants' bill mentioned and described.

9. For answer to the ninth paragraph of complainants' bill this defendant admits that it made default in the payment of all of the

interest and of the coupons representing such interest which became due on said first-mortgage bonds on the first day of July, 1894, and this defendant states that it is informed and believes it is
53 true that payment of said interest and coupons or some of them or some portion thereof was duly demanded by the holders of said bonds and coupons, and that the default continued in whole thereon until about the 27th day of November, 1894, when it is true that the receivers hereinafter mentioned offered to pay said defaulted interest at the face of the coupons representing the same (but not including interest alleged to have accrued upon said coupons after the date of their maturity), according to the terms thereof, and at the date of the offer to pay the same so made by said receivers. It admits that a portion of said defaulted interest and of said coupons (the amount of which this defendant is not able at the present time to state), has been paid by the receivers at the face of said coupons, but that no portion of interest accrued upon said defaulted coupons—if any has so accrued—has been paid or has been tendered by said receivers or by said The Union Pacific Railway Company, or by any person or persons on behalf of either of them or otherwise, but all of the interest—if any does accrue or is properly chargeable upon said defaulted coupons—remains due and unpaid.

This defendant, further answering, admits that at the time of the filing of complainants' bill no part of the interest or coupons representing interest which became due on each and all of the said outstanding first mortgage bonds on the first day of January, 1895, was paid by the Union Pacific Railway Company, nor yet by its receivers, the defendants herein, or by any other person for or on its behalf, but that default was wholly made thereon, and that the same and every part thereof still remains due and unpaid and in default.

And it further admits that payment of the said interest and coupons or some of them was as it is informed and believes duly made and demanded.

10. For answer to the tenth paragraph of complainants' bill this defendant admits each and every allegation therein contained in manner and form as therein written.

11. For answer further to said tenth paragraph this defendant admits that all and singular the properties of the said Union Pacific Railway Company embraced in the said first mortgage of complainants, as well as a large amount of other property of said The Union Pacific Railway Company, did pass into the hands of the receivers in said Ames cause in said tenth paragraph mentioned and that the same at the time of filing of complainants' bill remained so in the possession of the said receivers and that it was impossible for complainants to take possession of said properties except by and through this proceeding.

54 This defendant admits that the Union Pacific Railway Company at the time of the filing of complainants' bill was insolvent and unable to meet its operating expenses and its accrued obligations. That it still is in default of the payment of the inter-

est heretofore matured on its bonded debt and other obligations of the said defendant. It admits that there was operated a certain system of railroads in connection with the lines of this defendant known as the Union Pacific system, which system was operated under various rights, powers and authorities, but this defendant leaves complainants to their proofs as to whether or not the said system as a whole or in its several parts was unproductive of revenues in respect to said operations; and this defendant denies that the revenues derived from other parts of its railroad known as the Union division and embraced in said first mortgage of complainants, have been or continue to be diverted and used for the purpose of meeting deficits in the earnings of unproductive roads or parts of said system without right, or that any of such earnings have been at any time diverted or used for any other than proper corporate purposes or proper corporate indebtedness of said The Union Pacific Railway Company, or that in any other way or manner the revenues of the said Union division, or yet of this defendant, were used or pledged for any other than the proper corporate obligations of this defendant. This defendant submits all and singular each and every part and clause of the said first mortgage to the court for its determination as to the rights and privileges, securities or charges made as against said property for the benefit of the trustees of the said mortgage bonds or those whom they represent, and leaves to the court upon consideration of the terms of said instrument the determination of such rights and the construction of the securities given to or conferred upon the said trustees and their *cestui que trust.*

12. This defendant admits that the United States of America claims to have a lien upon the railroad and property, or upon some part of the railroad and property embraced in and covered by the mortgage of the trustees, but this defendant is unable to define the extent of the said alleged lien of the United States, and it alleges that whatever interest the United States may have or claims to have of and in respect to the said properties can only be determined by a hearing wherein its claim may be audited, and examined and wherein and whereby this defendant may, under the rules and practice of this court, show as against the same such sums in reduction thereof or satisfaction of the same as under the facts it may be entitled to. It prays that at any proper stage of this proceeding when any claim or claims of the United States
55 may be asserted it may have leave by proper amendment and by proper allegations to show and allege the truth of and in respect to each and every allegation made by the United States as against the property of said The Union Pacific Railway Company or The Union Pacific Railroad Company, and that it may show and allege in its behalf any advances against the said claim of the United States, either in whole or in part, so that it may show and allege of and in respect to said claim any matter in reduction thereof, either by way of payments made or losses incurred by said The Union Pacific Railway Company by and through any act done or omitted to be done by the United States of America of or in respect to the Union Pacific Railroad Company or the Union Pacific

Railway Company of or in respect to any claim for damages existing or which may exist in favor of said The Union Pacific Railway Company or The Union Pacific Railroad Company against the United States of America growing out of or existing under and by virtue of the said legislation or through legislation of the Congress of the United States, so that upon a proper hearing the true amount of the debt or claim of the United States may be ascertained and found, and further, that upon such hearing the lien of the United States—if any—upon any of the property owned by the Union Pacific Railway Company may be found and determined and defined.

Wherefore, and in respect to the said twelfth paragraph, this defendant prays, under proper leave of court, to further amend its answer herein as from time to time it may be advised it is material or necessary for it to make answer or proper showing.

This defendant further prays that it may also from time to time in this proceeding, as may be fit, necessary or proper, have further leave to answer any claim made or set up by any of the defendants named in the twelfth paragraph of complainants' bill, wherein or whereby any of the other of said defendants may seek to establish a charge or lien against any of the property of this defendant in this proceeding, and that it may have leave by proper allegations of amendment or otherwise to make any other showing of and in respect to the claim of any of its codefendants herein which may be necessary to the ascertainment and settlement of the amount in controversy herein between this defendant and any of its codefendants or of the complainants herein, and also to settle, determine and define the nature and extent of the lien which such defendants or parties hereto might have the right to urge or which they might seek to urge and establish herein, and that such leave to amend and to make such proper allegations this defendant submits
56 and relies upon as fit and necessary to a proper presentation of any cause which might hereafter by pleadings herein be made against it.

13. For answer to the thirteenth paragraph of complainants' bill this defendant admits all and singular the allegations therein contained in manner and form as therein alleged.

All of which this defendant stands ready upon the hearing of this cause and in accordance with the rules, practice and procedure of this honorable court to maintain and prove, without this, that if there is any other matter, cause or thing in the said bill of complaint contained, material or necessary for this defendant to make answer to and not herein well and sufficiently answered, confessed or denied, is true, to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, it prays to be hence dismissed in this behalf accordingly.

THE UNION PACIFIC RAILWAY COMPANY,
By W. J. CARROLL, *Its Solicitor.*

I hereby consent to the filing of the within answer out of time.

WINSLOW S. PIERCE,
Solicitor for Complainants.

Indorsed: Filed June 24, 1895. Elmer D. Frank, clerk.

Thereupon afterwards, to wit, upon said 24th day of June, 1895, separate answer of S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, was filed in said case, which said separate answer is in the words and figures following, to wit:

In the Circuit Courts of the United States for the Eighth Judicial Circuit and Districts of Nebraska, Iowa, Colorado, and Wyoming, and in the Third District Court of Utah Territory.

(Title of cause omitted.)

The Separate Answer of S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers of the Union Pacific Railway Company.

These defendants, saving and reserving to themselves all manner of benefit or advantage of exception or otherwise that may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto or to so much thereof as
57 these defendants are advised it is material or necessary to make answer unto, answering saith as follows:

1. They admit that the complainants have in their said bill in the several paragraphs thereof correctly stated and alleged the citizenship and residence of the parties to their said bill, and the organization, existence and authority for the corporate existence of the defendant The Union Pacific Railway Company, and that they have in their said bill correctly mentioned and described the time when, the manner in which and the causes in which these defendants became the possessors of the railroad and railroad property mentioned and described in complainants' bill, and particularly the railroad of the Union Pacific Railroad Company proper now known as the Union division of the Union Pacific Railway Company's railroad.

2. For answer to the tenth paragraph of complainants' bill these defendants admit each and every allegation thereof in manner and form as therein written.

3. For answer to so much of the eleventh paragraph of complainants' bill as they are advised it is material for them to answer, they deny that any part of the revenues derived from the railroad known as the Union division of the Union Pacific Railway Company or which is that property embraced in the mortgage to complainants as trustees, have been by them or that they continue to be diverted and used for the purpose of meeting any deficits in the earnings of unproductive roads in the Union Pacific system or parts of railroads

in said system; and they further deny that any part, lot or parcel of the revenues of said Union division have been by them diverted or expended for any other than the proper corporate obligations of the said Union Pacific Railway Company, or that any disposition has been made by them of any of the revenues of the said Union Pacific Railway Company, except as they have been disbursed and paid out or appropriated to the satisfaction of proper obligations of said The Union Pacific Railway Company, under and by virtue of the directions of the circuit court of the United States having jurisdiction over the subject-matter and over the said property and these defendants.

They admit that from and after their appointment as receivers of said The Union Pacific Railway Company in the year 1893 they operated all and singular all the properties of the Union Pacific Railway Company and of those various railroads operated in
58 harmony and connection therewith under the name of the Union Pacific system, and that the moneys derived from the operation and management of said The Union Pacific Railway Company as well as those other railroads hereinbefore mentioned, were used in and about and applied to the discharge of the obligations of the said Union Pacific Railway Company in respect thereto under such orders and directions from time to time as were made and given them by said circuit court of the United States, that being the court appointing them as such receivers.

And they further allege the truth to be that they so continued to maintain, operate and manage the said properties of the Union Pacific Railway Company under and by virtue of their appointment in said Ames cause above referred to, as well also as the properties mentioned, included in and described as the said Union Pacific system and which are mentioned and described in said tenth paragraph of complainants' bill, until about the 21st day of January, 1895, at which time by an order of this court in this cause these defendants were in like manner appointed receivers of the properties mentioned and described in complainants' bill and were therein and thereby directed to continue the operation of not only all of said property, but also all and singular the properties of the said Union Pacific system.

They further allege that the said order of their appointment as receivers in this cause on the application of complainants herein is a part of the record in this cause, and that its terms, provisions and conditions were and are binding upon the complainants herein for the use and benefit and protection of these receivers of and in respect to their various disbursements of moneys in respect to the properties of the Union Pacific Railway Company and to the orders made of and in respect thereto in this cause, and also in said cause known and described herein as the said Ames bill; and these defendants pray leave to refer to each and every clause, term and condition of the said order of their appointment herein, and to claim the full benefit thereof in every particular as though the same order were herein pleaded and set out at length, and that they may at all times in the course of this proceeding have the full benefit of each

and every term and condition in said order made and prescribed as and for their benefit and in the statement of their accounts and disbursements, and that they may have all proper credits for moneys paid out for them under and by virtue of their office as receivers herein or in said Ames cause.

They further allege that since their appointment as receivers herein they have applied the revenues arising from the
59 operation of all of the property in their hands as such receivers under and by virtue of the directions of the circuit court of the United States, and they now and here refer to those various orders made in respect to the payment of said moneys in this cause, as well also as to those orders made in respect thereto in said Ames cause, and make the same, by reference, a part of this their answer herein, praying that upon final hearing, or at any proceeding herein they may refer thereto with the same force and effect as though the same were specially pleaded herein, and that the court will, upon final hearing, ascertain the condition of the accounts of these defendants with reference to said properties and their disbursements of moneys herein, and that upon final accounting herein these defendants may be allowed out of the moneys arising from the operation of the Union Pacific Railway Company, and also all that part of the property mentioned and described in complainants' mortgage, all of their disbursements paid or made by them of and in respect to the property in their hands as receivers herein, or paid out by them under orders and directions of this court made and given in said Ames cause, so that for all of their disbursements so made they may have full, complete and perfect protection, and that the court will, upon final accounting herein, order and direct that for all moneys so by them paid out in excess of moneys received by them they shall have credit, and that for any deficiency which may exist or arise in their favor of and in respect to the operation and maintenance of the said properties or the payment of taxes thereon, they may have a lien on the properties mentioned and described in complainants' bill prior and superior to the lien of complainants herein, and such full and complete relief of and in respect to their management, operation and control of the said properties or any part thereof as may be necessary for their full, complete and final protection.

All of which these defendants stand ready upon the hearing of this cause and in accordance with the practice and procedure of this honorable court to maintain and prove, without this, that if there is any other matter, cause or thing in the said bill of complaint contained, material or necessary for these defendants to make answer to and not herein well and sufficiently answered, confessed or denied, is true, to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall
60 direct, and they pray to be hence dismissed in this behalf accordingly.

THE RECEIVERS AFORESAID,
By JNO. M. THURSTON, *Their Solicitor.*

I hereby consent to the filing of the within as out of time.

WINSLOW S. PIERCE,
Solicitor for Complainants.

Indorsed: Filed June 24, 1895. Elmer D. Frank, clerk.

Thereupon afterwards, to wit, on the 3rd day of May, 1897, petition of Credits Commutation Company for leave to intervene was filed in said case, which said petition is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT.

DISTRICT OF NEBRASKA.

IN EQUITY.

UNITED STATES OF AMERICA, *Complainant,* vs. UNION PACIFIC RAILWAY COMPANY, ET AL., *Defendants.*	No. 157 S. IN EQUITY.
F. GORDON DEXTER AND OLIVER AMES, SECOND, TRUSTEES, *Complainant,* vs. UNION PACIFIC RAILWAY COMPANY, ET ALS., *Defendants.*	No. 48 R. IN EQUITY.
OLIVER AMES, SECOND, AND SAMUEL CARR, EXECUTORS, ETC., ET ALS., *Complainants,* vs. UNION PACIFIC RAILWAY COMPANY, ET ALS., *Defendants.*	No. 94 Q. IN EQUITY.

PETITION OF CREDITS COMMUTATION COMPANY FOR LEAVE TO INTERVENE IN THE ABOVE-ENTITLED CAUSES.

PART ONE.

OF THE PETITIONER'S STANDING AND INTERESTS.

RESPECTFULLY REPRESENTS your petitioner:

(1) That your petitioner is a corporation duly organized under the laws of the State of Iowa and is a citizen of that State, having its place of business in Sioux City in said State.

(2) Your petitioner owns all the stock of a combined railroad and wagon bridge recently completed across the Missouri river at Sioux City, at a cost of about a million and a quarter of dollars, and as beneficiary under an assignment, is entitled to three-quarters of the capital stock of the Sioux City and Northern Railroad Company, which has lately constructed, at a cost of about two millions, a railroad extending northerly from Sioux City about one hundred miles to a junction with the Great Northern Railroad, over whose lines it makes connection with the head of the Great Lakes at Duluth; also all the stock of another railroad company called the Sioux City, O'Neill & Western, built at about the same time at a cost of about two millions and a half, running one hundred and thirty miles west from Sioux City, Iowa, to O'Neill in Nebraska, which railroads are connected by the aforesaid bridge of your petitioner; also, the stock of said Sioux City and Northern Railroad Company also carries with it all the stock of a Terminal Company owning large and valuable terminal properties recently constructed in said Sioux City at a cost of about two mil-

lions, designed to accommodate the railroads aforesaid, and all other railroads running into Sioux City; and substantially all interests in said properties of alleged priority to the interest of your petitioner therein are claimed by your petitioner, but are in controversy and involved in pending litigation; and your petitioner owns or has a controlling interest in certain other extensive industries in said Sioux City, dependent upon railroad facilities and the rates of fare thereof, so that the cost of all the undertakings aforesaid represented by your petitioner herein amounts to about ten million dollars. And your petitioner is also representative of other interests hereinafter mentioned, which, your petitioner submits, entitles it to standing herein.

(3) And your petitioner shows that the comprehensive design and single purpose of all said quasi public enterprises of your petitioner was to promote and accommodate an interchange of traffic and transportation between the country west of the Missouri river at Sioux City and the head of lake navigation at Superior and Duluth, and that the usefulness and value of all said railroad terminal and bridge properties depend, for the most part if not almost wholly, upon such connection as may be made between the same and the main line of said Union Pacific Railroad, and upon the place of such connection, and the just and equitable terms thereof.

(4) That your petitioner was organized and acquired said properties and completed said bridge for the purpose, among others, of securing a connection thereof with said Union Pacific Railroad by building or causing to be built or extended a railroad from said Sioux City in a general southwesterly direction to a junction with said Union Pacific Railroad as aforesaid.

Your petitioner is also the owner of one of the first mortgage bonds hereinafter mentioned of the Union Pacific Railroad Company, and brings this petition for the protection of its several interests herein, for itself and all others in like situation who may choose to join in this petition.

(5) Said defendant, the Union Pacific Railway Company, purports to be a consolidated company, the constituents whereof were the Union Pacific Railroad Company and the Kansas Pacific Railway Company, which last-named company was, by assignments, transfers, and change of names, successor to a number of predecessor companies.

(6) Said Union Pacific Railroad Company was created by a certain Act of Congress, called the Act of July 1st, 1862, by which Act said Union Pacific Railroad Company and the predecessors of said Kansas Pacific Railway Company, and certain other companies, to-wit, the Central Pacific and the Western Pacific Railroad Companies, were authorized to co-operate in building a single and entire line of railroad and telegraph with three branches on the east which were to converge from Sioux City, Council Bluffs, and Kansas City, all on the Missouri, to a common junction to the westward thereof on or near the one hundredth meridian of longitude, and thence to extend westerly in a single trunk line to the Pacific Ocean.

(7) And that "to secure to the government the use of the same for postal, military, and other purposes," Congress, in and by said Act, conferred upon said companies grants of vast and valuable tracts of the public lands, and certain rights, privileges, and franchises, and

further subsidized said companies by a large advance to them of the public credit in the form of the bonds of the United States, all to aid in the construction of said roads.

PART TWO.

OF THE PUBLIC AND QUASI-PUBLIC OBLIGATIONS OF SAID UNION PACIFIC RAILWAY COMPANY, ESPECIALLY PERTINENT TO THE RIGHT OF YOUR PETITIONER TO INTERVENE IN THE FIRST OF THE ABOVE ENTITLED SUITS—THAT ONE BROUGHT BY THE UNITED STATES.

(8) All the grants, rights, privileges, and franchises aforesaid were made to said companies on condition that said companies should pay said subsidy bonds at the maturity thereof; and to secure the payment of said bonds and interest thereon, a statutory first mortgage or lien was by said Act created upon the roads and properties of said bond-aided Pacific Railroad Companies, and further, by said Act and in consideration of the public aid aforesaid, certain duties, obligations, and servitudes were imposed upon said companies, their successors and assigns, and upon the railroad constructed by them and the operations thereof, and were by said companies assumed in the acceptance of said Act.

(9) Your petitioner, showing that the public credit and domain are not subject to disposition by the government for the general benefit of the government as such, but only for limited purposes of the government, and may for the most part be disposed of only in consideration of benefits to be thereby secured to the public generally, or such of the public as may wish, or have any peculiar interest, to avail of such benefit, and may not be disposed of by the executive department of the gov-

ernment at all without the authority of Congress, says that certain public and quasi public duties, obligations and servitudes were imposed upon said bond-aided Pacific Railroad Companies and their respective railroads in consideration of the public aid and grants rendered to them by the United States as aforesaid, in most of which your petitioner has interests in common with the public and special and peculiar to itself, all of which are put in jeopardy as hereinafter stated and for the protection or defence of which no party appears in said proceedings. Your petitioner says that said public and quasi public duties, obligations and servitudes are divisible into classes substantially as follows:—

First: Such as are due to such of the public as may wish or have any peculiar interest to avail of the benefit of performance.

Second: Such as are due to certain sections of the country.

Third: Those due both to the government as such and to the public.

Fourth: Those not due to the government as such, and the benefit whereof is intended to inure wholly to the public.

Fifth: Those due to the government as such, but in the performance whereof the public or some of the public have general or peculiar interests.

Sixth: Those due to the government as such, and in which the public or any member of it has no interest.

OBLIGATIONS OF SAID COMPANY DUE TO THE PETITIONER.

FIRST: BECAUSE OF ITS OWN SPECIAL OR PECULIAR INTERESTS.

(10) Among the duties, obligations and servitudes first above described, performance whereof is due to such of the public as may wish or have any peculiar interest to avail of the benefit thereof, are those contained in the fifteenth section of said Act of July 1st, 1862, as follows—

"Sec. 15. AND BE IT FURTHER ENACTED, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto."

Your petitioner shows that, by the provisions aforesaid, the President of the United States must fix the place of connection with said Union Pacific Railroad before any company desiring the same can be sure that its incorporated location will conform therewith.

(11) Your petitioner was organized in the latter part of the year 1894, but has abstained from making any application to the President of the United States to fix the place at which and the just and equitable terms upon which your petitioner should build a railroad to connect with the road of said Union Pacific Railway Company; because said company had become embarrassed and all its property was and ever since has been in the hands of receivers appointed by this Court, and said company was and ever since has been apparently insolvent, and bills in equity have been filed, in this Court and others,

to obtain foreclosure in behalf of certain alleged first mortgage bonds purporting to have been secured by liens and mortgages upon the road of said company; under which circumstances any such application would seemingly have been ill-timed and unavailing. And especially has your petitioner thus abstained, for the further reason that the obligations of said railroad company to pay certain subsidy bonds hereinafter mentioned has been in the meantime maturing, and legislation to adjust the indebtedness thereof and to avail of the security therefor and to provide for a reorganization of said company has been constantly pending before Congress, to which tribunal, as the more appropriate to safeguard your petitioner's interests, your petitioner has constantly appealed by appearing before committees of both branches of Congress, and thus and otherwise urging the enactment of just and suitable laws for the protection of your petitioner's said interests; and while thus engaged and while the Congress was intent upon the matter, your petitioner was surprised with the information that the Attorney-General had entered into an agreement to prosecute and submit to foreclosure sales of or under the lien of the United States, and other alleged liens upon the property of said Union Pacific Railway Company securing said subsidy bonds and certain other bonds asserting a lien in priority to the lien of the United States, and had filed his bill in behalf of and purported to have entered an appearance for the United States in the foreclosure suits aforesaid to effect such sale of said Union Pacific Railroad.

(12) Your petitioner, to protect the interests peculiar to itself as aforesaid against the threatened danger of any deprivation of a right to build its railroad to and to

connect the same with said Union Pacific Railroad on just and equitable terms, as aforesaid, by any foreclosure sale in the premises, asks to be admitted a party hereto.

SECOND: OF THE DUTIES OF SAID BOND-AIDED PACIFIC RAILROADS TO DIFFERENT SECTIONS OF THE COUNTRY.

(13) Further, your petitioner submits that the local and peculiar public interests represented by your petitioner practically determine the place at which and the just and equitable terms upon which your petitioner should be allowed to build or extend a railroad to a junction with the Union Pacific Railroad under the provisions of the act above quoted.

(14) Your petitioner says: That a purpose is declared in said Act of July 1st, 1862, and in the debates of Congress, whereby the passage thereof and of other acts amendatory thereto were secured to give to all sections of the country east of the Missouri river and to the existing and prospective railroad systems thereof participation in and equal aids and facilities to avail of the benefit of the transcontinental transportation to be afforded by the national aid rendered to said Pacific Railroads; and to that end it was provided in said act that the eastern terminus or initial point of the trunk line of said Pacific Railroads should be at the one-hundredth meridian of longitude, from which three branches should diverge to points on the north and south trend of the Missouri river, from and between Sioux City on the north

and Kansas City on the south, which were to compose two of said branches; and Council Bluffs was afterwards named as the easterly end of the third branch. That the provision in behalf of Sioux City and the middle Northwest is in Section 14 of said Act of 1862, as follows:—

"And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one-hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply w th the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned."

(15) That afterwards, by a certain other act, known as the Act of July 2nd, 1864, said Kansas City branch was allowed to proceed straight west from that city to Denver, and thence to connect with the main line of said Union Pacific Railroad at Cheyenne; substantially like rights and on similar conditions to connect the Sioux City branch at a point further west than the one hundredth meridian were also accorded, and the Union Pacific Railroad Company was relieved from building the same; all in Section 17 of said Act of July 2nd, 1864, as follows:—

"And be it further enacted, That so much of section fourteen of said Act as relates to a branch from Sioux City be, and the same is hereby, amended so as to read as follows: That whenever a line of railroad shall be completed through the States of Iowa, or Minnesota, to Sioux City, such company, now organized, or may hereafter be organized, under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States, by its request may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route to such a point on, and so as to connect with, the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act

to which this is an amendment, for the construction of the said Union Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year; Provided, That said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch."

(16) Your petitioner says that said amendment was not intended or understood to vary the general location or direction of said Sioux City branch, and that the construction thereof would have afforded to Sioux City and the middle Northwest and the head of lake navigation more than three hundred miles of as direct western connection with the Union Pacific as that secured to and enjoyed by the other sections of the country served by the other branches; that the scope of said acts to the general intent aforesaid and including the contemplated location and direction of said Sioux City branch was after both said acts were passed in effect judicially declared by the Supreme Court in the case of Union Pacific Railroad Company v. Hall, 91 U. S., 343.

(17) Your petitioner begs to call attention to the fact that not only the towns at the three eastern termini of the branch lines aforesaid were intended to be equally and alike benefitted by connection with the trunk line aforesaid, but that provision was made for participation therein by all other prospective railroad centers on the stretch of the Missouri river above mentioned; the company which was to build the Kansas City branch was required either to locate said road by way of Leavenworth, or to build a branch to Leavenworth; a line from St. Joseph was either to reach the Pacific Railroad's system by way of Atchison, from which last-named place

a connecting line was also to be subsidized, or an unsubsidized line from St. Joseph could be built to a direct connection with said Union Pacific Railroad.

(18) And your petitioner shows that said three bond-aided branches were to enjoy certain advantages and privileges of great and almost inestimable value to themselves and the sections of the country to be served by them, especially as set forth in the fifteenth section of said Act of July 2, 1864, as follows:—

"Sec. 15. AND BE IT FURTHER ENACTED, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

(19) But your petitioner says that the section and traffic to be served by the branch from Sioux City were substantially deprived of the promised connection with said Pacific roads and are threatened with an extinction of all the rights and protection secured to all the branches alike in said fifteenth section of said Act of 1864 aforesaid, by the declared purpose in the above-entitled causes to procure a sale of the rest of said Union Pacific Railroad, without including therein and as a part thereof any connection with Sioux City and the middle Northwest whatever.

(20) To show more explicitly the sectional grievances of the middle Northwest and Sioux City and the injury to the then existing and prospective traffic and business thereof and to your petitioner, your petitioner says that, under the provisions of said Act of 1864 hereinbefore mentioned, the President designated a corpora-

tion known as the Sioux City and Pacific Railroad Company to build said Sioux City branch, which company had already theretofore surveyed a location for a road of its own, ostensibly as a feeder—which, in fact, it always has been—to another railroad, known as the Chicago and Northwestern, then building across said State of Iowa to a prospective junction with the Council Bluffs branch of the Union Pacific Railroad at or near Fremont in the State of Nebraska, both which feeder and said Chicago and Northwestern Railroad were apparently, and your petitioner on information and belief alleges were, in truth and in fact, owned and controlled by substantially the same men and in a common interest.

(21) And your petitioner, on information and belief, says that the officers and controllers of said Sioux City and Pacific Railroad Company, conspiring and confederating to divert the grants and subsidies of the government from aid to the construction of the Sioux City branch of said Union Pacific Railroad on the true and contemplated line and location thereof aforesaid, and to avail of the same for the building of said feeding line to said Chicago and Northwestern, and to aid in the extension of the latter, made and procured to be made to the departments of the government whose sanction and approval were necessary in the premises, misrepresentations in substance and effect that high and precipitous bluffs on the banks of the Missouri river opposite Sioux City, and the absence of any valleys or ravines through the same, and the presence of formidable hills and reservations occupied by possibly hostile Indians, and other and like moral, physical and other insurmountable obstacles prevented the construction of the Sioux City branch of said Union Pacific Railroad along the line and

location contemplated by the laws relating thereto, and misrepresentations to the effect that the most direct and practicable route for such connection was on the line already theretofore selected for its own road by said Sioux City and Pacific Railroad Company, and then over the Chicago and Northwestern Railroad, which it was to join, through to Fremont aforesaid; and having by such means procured the acceptance of said location, it constructed said branch on its own location aforesaid, whereby the same was made to run from Sioux City in a general southeasterly direction away from the Pacific down the eastern bottom-lands of the Missouri river about seventy miles, at which point it is twenty or thirty miles further from the Pacific than when it started; and there joining the Chicago and Northwestern Railroad, it proceeds west, supplementing and extending the last-named railroad to Fremont, where, after completing a total length of but little over one hundred miles from Sioux City, it ended almost due south thereof in a junction with the Council Bluffs branch of said Union Pacific aforesaid.

(22) None of the alleged obstacles to the construction of said branch on the location contemplated by the Acts of Congress did in fact exist. The mislocation of said branch and misdirection of the government's aid aforesaid at once became and ever since have been of public notoriety and a cause of constant protest and complaint on the part of sections immediately affected, the public records whereof are too voluminous to permit any exhaustive recital thereof herein; but your petitioner begs leave to call attention at the hearing in support hereof, to the reports of committees and commissions appointed by Congress, and the reports of the various de-

partments of the government, the debates in Congress, and the resolutions of the legislatures of the Middle Northwestern States thereon. Wherefore, your petitioner submits that said Sioux City and Pacific Railroad Company did "not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act (of July 2, 1864, Sec. 17) as contemplated by the provisions of this act"; and for that reason by said section of said act, "all the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States."

(23) The Middle Northestern States were in manner aforesaid and ever since have been cut off from the connection with the Pacific Railroad systems as contemplated, and, to correct this wrong, or, at least, to prevent a continuance of the consequent discrimination against that section and Sioux City, your petitioner, when said Pacific Railroad Companies were becoming bankrupt and in default in their obligations to the United States, sought relief from Congress, whereby the promised connection aforesaid might be secured in any reorganization of said companies or their properties which Congress should permit; and in furtherance of their just demands represented by your petitioner aforesaid herein, business associations and the people in the towns and cities and associations in the Middle Northwestern States supported your petitioner, with petitions and memorials addressed to Congress, to which your petitioner craves leave to refer at the hearing.

(24) While your petitioner was seeking the aid of Congress in the premises, the Attorney-General filed his bill in the first of the above-entitled suits for foreclosure

sale and purported to enter his appearance for the United States in the second of said suits; in both which proceedings it is the manifest and declared purpose to sell the trunk line of said Union Pacific Railroad, together with the branches thereof aforesaid from Kansas City and from Council Bluffs as one property and an entirety, whereby said branches and the cities and sections at the eastern terminus and along the lines thereof will preserve their connection with said Union Pacific Railroad and participation in its business as contemplated, but it is not intended and is impossible, for want of default, to include in said sale as a part thereof the line of said Sioux City and Pacific Company, so that even that pretended but inadequate connection of Sioux City and the Middle Northwest with said Union Pacific Railroad as a part thereof and entitled to the terms of connection aforesaid will in any such sale be taken away.

(25) Your petitioner, showing that there are now large railroad systems entering Sioux City, and which have no connection with said Pacific Railroad, and that your petitioner owns or controls the best and practically the only terminals, bridges and facilities in the Middle Northwest to accommodate such connection, and being desirous of building a railroad to effect the same, begs leave to intervene herein to protect its right so to do, and either to prevent any foreclosure sale of the Union Pacific Railroad, or to secure in any decree therefor, among other just and equitable terms of the right to connect therewith, the benefit of the provision of the laws above quoted, just as if your petitioner's proposed road had been built in place of said Sioux City and Pacific Railroad, which cannot be sold in said foreclosure proceedings, and otherwise to protect the interests owned and

represented by your petitioner in the premises against the risk of any deprivation of any of the same by any foreclosure sale herein.

THIRD: OF THE OBLIGATIONS OF SAID BOND-AIDED RAILROADS DUE BOTH TO THE GOVERNMENT AS SUCH, AND TO THE PUBLIC.

(26) Your petitioner begs leave to submit as a proposition supported by the law and facts relied upon in every part of this petition, that in contemplation of the government and the people, the bond-aided Pacific Railroad Companies built but one railroad, and none of it can be sold separate and apart from the rest; that your petitioner, as owner and controller of large shipping and receiving interests hereinafter explained, is entitled to standing in its own right, without intervention of the United States, and beyond their control, except by act of Congress, to have the unity of the system of roads preserved.

(27) In addition to the acts hereinbefore quoted, which show the unity of the road, attention is called to other like provisions. The title of said Act of 1862 is: "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the government the use of the same for postal, military, and other purposes."

The acts constantly speak of it as one railroad. By Section 12 of the Act of 1862, "The track upon the entire line of said railroad and branches shall be of uniform width * * * so that, when completed, cars can be run from the Missouri River to the Pacific Coast." The building companies had few or no separable and inde-

pendent rights, but they could consolidate, and, under certain conditions, the location of either could be changed by others so as to make it conform to their own, both as to branches (Sec. 9, Act 1862) and the meeting of trunk lines (Sec. 12, Act 1864; Act of July 3, 1866; Act of May 6, 1870). If any of said companies failed to build fast enough to complete its alloted part in the time limited for that purpose, the others, one or more, could build in its place, and, finally, the ones that built the fastest could build the most (Section 10, Act 1862; Sections 12 and 16, Act 1864; Act July 3, 1866).

The place for connection of the eastern and western ends was fixed three times by Acts of Congress (Sections 1 and 9, Act of 1862; Sec. 12, Act of July 2, 1864, and Act of May 6, 1870.) The companies respectively were required to transport the materials required by each other at cost (Section 12, Act of 1862.)

This idea of one road was carried so far that, by Section 17 of said Act of 1862, it was—

"Provided, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States."

Though this harsh provision was modified by Section 7 of the Act of 1864, insistance upon the unity of the road was not in any way relaxed, and the condition was retained, that for a failure to complete the whole, or for any failure afterwards—that is, now or hereafter—to keep the whole in repair, the United States could and can take the whole and use the income of the whole to repay the expenses of such repair (Sect. 17, Act 1862).

(28). Among other obligations and servitudes to preserve the unity aforesaid imposed upon said companies and road, and which are expressly due both to the government as such, and to the public, is the following, from Section 12 of the Act of 1862, substantially repeated in Section 15 of the Act of 1864:

"The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the government and the public are concerned, as one connected, continuous line."

Attention is called to the fact that even though it be held that the lien of the subsidy bonds does not extend over any but bond-aided lines (United States v. Kansas Pacific Railway Company, 99 U. S., 455), yet the rights of the government in and to the use of the roads were secured by the grants of land rather than by the bond subsidy. Act, July 1st, 1862, Sec. 3. And the continuity of the whole was insisted upon.

By the Act of March 3rd, 1869, lands were granted to the companies building the extension of the Kansas Pacific line from the three hundred and ninety-fourth mile post west by way of Denver to Cheyenne, and it was enacted that:

"All the provisions of law for the operation of said Pacific railroad as a continuous line should apply to said extensions."

In the case of the United States v. Union Pacific Railway Company, 148 U. S., 562, the company successfully contended that the foregoing line was "continuous" within the acts aforesaid, the Court saying that the builders were "two corporations engaged in a construction of the same line of road."

(29). That said Section 15 of the Act of July 2nd, 1864, hereinbefore quoted, which secured co-operation between the roads and branches without discrimination

and re-enacted that they were to be operated as a continuous line, was by an Act of June 20th, 1874, amended so as to make it a criminal offense for those having the roads in charge to refuse so to operate them, and imposed punitive damages on the companies in behalf of anybody aggrieved by the refusal, and by the same act the Denver and Cheyenne connection was again made a part of the continuous line.

And that by Section 11 of the Thurman Act (May 7, 1878), the failure of any of the companies to perform the requirements of any of the acts aforesaid, for a period of six months, should operate as forfeiture of all rights, privileges, grants, and franchises derived or obtained from the United States.

(30). Wherefore, your petitioner shows that "so far as the government is concerned," any sale of the Union Pacific Railway or any part thereof without the contemporaneous sale of the whole, including the Sioux City branch thereof, and the Central Pacific Railroad too, and by which sale the whole or any part of either should pass to a purchaser free from the foregoing obligations, and that any operation of either or any part of either of said roads, as if so freed, would not only defeat the declared purpose of all aid rendered by the government, but would constitute a crime against it punishable by the imprisonment of the natural persons and the death and forfeiture to the government of the franchises and property of the offending company.

(31). That "so far as the public is concerned," such sale and operation subjects the offending company to punitive damages (Sec. 15, Act of July 2nd, 1864; Act of June 20, 1874). That by the act of May 3rd, 1873, any

Circuit Court of the United States can issue mandamus to the Union Pacific Railway Company to compel such continuous operation. That this applies to the branches as well as the main lines. That the mandamus shall issue on the application of your petitioner, to which proceedings the United States are not a pertinent party, all as held in

Union Pacific R. R. Co. v. Hall, 91 U. S., 343.

(32). Your petitioner calls attention to the fact that the foregoing case expressly recognizes the right of Sioux City to branch connection just like that then sustained by the court, and your petitioner submits as obvious that any foreclosure sale of all the rest of said Union Pacific Railroad separate and apart from the Sioux City branch, would be wholly destructive of the right aforesaid.

(33). Your petitioner is interested, as was the defendant in the above entitled case, in the act above quoted; as are also all the shippers and receivers of goods in said Sioux City and the country round about there, by transportation over the line of said Pacific Railroad; and especially has your petitioner an interest for this, that it owns the most valuable and controlling interest in the Sioux City Stock Yards Company, on which are located many large packing plants, making Sioux City one of the large packing points in the country, and constituting the principal industry of that city, and animals to supply the products thereof are, and under favorable connections and reasonable rates of fare, would be, largely drawn from the territory occupied by said Pacific Railroads.

FOURTH: OF THE OBLIGATIONS OF SAID COMPANY NOT DUE TO THE GOVERNMENT AS SUCH, THE BENEFIT WHEREOF IS INTENDED TO INURE WHOLLY TO THE PUBLIC.

(34). Among other provisions of the acts for aiding said Pacific road, which secures the unity thereof, and to inure to the benefit of the public rather than to the United States as such, is the following from Section 18 of the Act of July 1, 1862:

"Sec. 18. AND BE IT FURTHER ENACTED, That whenever it appears that the net earning of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law."

(35). Your petitioner begs to call attention to the fact that this act requires the earnings of the "entire road" to be united and when such earnings exceed ten per centum upon its cost, Congress may reduce the rates of fare thereon, that is, on the "entire road."

(36). Your petitioner further shows that the reservation of power was not for the benefit of the United States and to secure the payment of its debt but obviously the reverse, and, in the sole interest of the public; for the earnings to be taken into account as aforesaid expressly include compensation for service rendered to the Government by the roads, which compensation, by other provisions of said act, was to be retained for the payment of the subsidy bonds and interest, the amount of which retention would be reduced by a reduction of rates of fare. It also contemplates that a reduction of rates of fare will necessarily reduce the five per centum of net earnings also to be paid to the government.

(37). And your petitioner, interested in the rates of fare on said road as aforesaid, submits that its right, in common with the right of all the public similarly situated, to petition Congress for the exercise of the power reserved to it as aforesaid, and the power of Congress to comply therewith cannot be taken away by a sale of said road, and especially not by a sale of a part thereof and the dismemberment of the same merely on the consent of the executive department or law officers of the government.

(38). Your petitioner submits that the powers and discretions which the Government and the President and the Congress and the Courts may exercise in the premises as hereinbefore set forth constitute a trust for the benefit of the public, the observance whereof is secured as a perpetual servitude imposed upon said railroads as an entirety, and should run with their properties and franchises as an entirety, to which all mortgages are subject, which the redemption of the subsidy bonds by the companies receiving the same would not terminate, and which, without authority from congress, the executive department of the Government should not attempt to extinguish by any sale in behalf of the Government's lien; and subject to which the Government would take the property in any forfeiture to or strict foreclosure in behalf of the United States, since the Government should itself be so bound as contemplated in the last part of Section 15 of the Act of 1862, even if provision in behalf of the public be not applicable to any other successor of said Union Pacific Railroad Company.

FIFTH: OF THE OBLIGATIONS OF SAID RAILROAD COMPANIES DUE TO THE GOVERNMENT AS SUCH, BUT IN THE PERFORMANCE WHEREOF

THE PUBLIC, OR SOME OF THE PUBLIC, HAVE A GENERAL OR SPECIAL INTEREST.

(39). Notwithstanding the contention of this petitioner that the rights and interests of the public and of your petitioner as a member thereof in said Pacific Railroad as hereinbefore stated would survive any foreclosure sale of said road in pursuance of any mortgage upon the same or any part thereof, yet your petitioner is apprehensive that if the government were to subject its interests in said road to sale to a stranger, such purchaser might claim that the right of the President of the United States to fix the place at which and to prescribe the just and equitable terms upon which your petitioner could connect a railroad with said Pacific Railroad was a power in the President, coupled with the interest of the United States; and that, upon such voluntary parting with that interest, the exercise of such a power would be a mere judicial function which could not be imposed upon the chief of the Executive branch of the Government, and, in like manner, that the right of Congress to reduce the rates of fare on said railroad was also a power coupled with an interest, and after such sale would be become a judicial function which could not be imposed upon the legislative branch of the government, and that the provision whereby the government may take the entire road and devote all its earnings to keep the whole in repair should, as a like power, be also lost by a sale of any part of said road with the Government's consent, and that the right of the Government to insist that said railroad shall be operated and used as a connected, continuous line from the Missouri river to the Pacific Ocean should be held to have been waived by a voluntary sale of a part and dismemberment of said road by or in be-

half of the United States; and your petitioner submits that an auction sale of said road by the United States, with no restrictions except to the highest bidder, would not only terminate the right of Congress to amend, alter, and repeal said Act of July 1st, 1862, as, by Section 18 of said Act, Congress may now do to promote the public welfare by keeping said railroad in working order for the use of the government at all times and particularly in time of war, but would even enable the contemplated enemy in such a war to become the purchaser.

(40). Your petitioner submits that, while the United States retains its interest in said railroad, or if said Companies shall simply discharge their financial obligations to the United States, as originally intended, none of he foregoing contentions can be raised, and that no sale of the interest of the United States should be made or suffered without the authority of Congress and the enactment of such laws for the protection of the government and public in the premises as Congress may see fit to impose as a condition of such sale.

Wherefore, your petitioner is interested in the lawful manner of the enforcement of the obligations of said Pacific Railroad Companies which are due to the United States as such.

(41). Your petitioner says that said bond-aided railroad companies are under obligation to redeem at maturity the subsidy bonds received by them, and concedes that this undertaking pertains to said companies severally to redeem the bonds they respectively received; that a failure of any company to do so does not work forfeiture, as hereinafter mentioned, by any other company (see Section 7, Act of 1864); that that obligation is due to

the United States as such, and that the enforcement of remedies for breach of the obligation is the duty of the law officers of the Government alone; and that the scope of their duties in any case wherein it is sought to proceed against any interest of the United States in a Federal Court, is to suggest such interest to the Court (Stanley v. Schwalby, 147 U. S., 508), whereupon it becomes the duty of the Court to protect that interest if possible, and, if not, then to decline further jurisdiction in the case (Cunningham v. Macon R. R. Co., 109 U. S., 446), all without appearance or suggestion by friends of the Court or other parties to the suit.

(42). But your petitioner relies upon the right which any party in interest has to the writ of mandamus from the Courts of the District of Columbia to compel the Attorney-General or any other cabinet officer of the Government to perform any duty whereunto he is expressly commanded (U. S. ex rel Oscar Dunlap v. Black, 128 U. S., 40); and to a writ of injunction from said Court to restrain such officer from disregarding or violating any such command.

Noble v. Union River Logging R. R. Co., 147 U. S. 165.

(43). And your petitioner submits that in a proper case in which the rights or property of the government is involved in a Federal Court which cannot issue mandamus or injunction to the Attorney-General as aforesaid, any party interested in the performance by the Attorney-General of any duty whereunto he is commanded, and which he neglects or refuses to perform, should have standing of necessity to make suggestions to the Court of the duty of the Attorney-General, so that the

proceedings may conform thereto, or, if not so, then such party should have standing to proceed against any private citizens confederating or co-operating with the Attorney-General to secure the avoidance by him of his duty, and to have such private citizens enjoined.

(44). Your petitioner submits that this should be especially true in the case at bar, because of the express provision of Section 10 of the Act of Congress known as the Thurman Act (May 7, 1878), relating thereto, as follows:

"Sec. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceedings against the several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceedings already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to."

And your petitioner shows that the first of the above-entitled suits is within the provision of said Act, and that there are other proceedings against said Union Pacific Railway Company pending in the second and third of the above-entitled suits, such as may authorize or require the intervention of the Attorney-General therein under the Act aforesaid.

(45). And thereupon your petitioner begs leave to show that said Union Pacific Railway Company, all its property and assets were, in or about the spring or summer of the year 1893, put into the hands of receivers appointed by this Court in the third of the above-entitled suits.

(46). That said company then and for a long time theretofore was and ever since has been insolvent, without money, and unable to pay its indebtedness, and ever since the appointment of said receivers has been out of the operation and control of the said railroad and wholly unable to comply with and has not by itself complied with any of its duties and obligations in respect of the operation thereof, and that all requests, requirements, and demands upon it by itself to perform the same are and ever since the appointment of said receivers have been necessarily and notoriously useless and unavailing.

(47). But your petitioner is ignorant as to whether said Union Pacific Railway Company is in any default to the United States merely for failure to redeem any of said subsidy bonds, or to pay the interest thereon; on a correct application of the theory of accounting apparently adopted by the Supreme Court in the case of The United States vs. Union Pacific Railroad Company, 91 U. S. 72, it is not; but your petitioner submits that if and whatever so in default the remedies to which the United States are entitled and the duties of the executive departments of the Government in respect thereof are as follows:

(48). That is to say, all or the greater part of the road-beds and large tracts of land and all or most of the rights, privileges and franchises of said Union Pacific Railway Company were, by succession, derived from grants made by the United States in said Act of July 1st, 1862, wherein, in the sixth section thereof, it is expressly declared and limited:

"Section 6. And be it further enacted that the grants aforesaid are made upon condition that the said Company shall pay said bonds at maturity."

(49). That further, by the preceding section of the same Act, it was provided:

" * * * and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States."

(50). That after said Act and by the Thurman Act so-called (Act of May 7, 1878, Section 11), it was further expressly enacted as follows:

"Sec. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced."

(51). Your petitioner begs leave to quote from the argument of the Railroad Company itself as reported in the case of

The United States v. Union Pacific R. R. Co.,
91 U. S., 72.

"We come next to the question of looking to those provisions as to the mode of repayment. At what time, if at all, if the Government may proceed by assumpsit for either bonds or interest, does the Act contemplate that there may be a default in the payment? And we answer that such a default will occur at the maturity of each bond if from the sources thus provided and a statement of the account and the application of the sums earliest due from the Government in the payment of the sums earliest due to the Government, be they principal or interest, any such interest shall be found to be due.

"This results from the fact that there is no provision in this clause for a statement of account by the Secretary of the Treasury every six months."

And again—

"Throughout the charter, the provisions to protect the Government, we submit, are in clear terms either indisputable common law, strict conditions, or a mortgage which is shaped as a strict condition allowing no equity of redemption, but providing a mere summary forfeiture."

(52). The Court practically adopted this construction in that case, and, dwelling upon the fact that a forfeiture would follow any default under the sixth section of the Act of July 1st, 1862, held that there would be default in the repayment of the interest on the subsidy bonds only when the principal matured at which time "there was left for the Government the entire property of the corporation, of which immediate possession could be taken on a declaration of forfeiture. * * * Congress * * * rested satisfied with the entire property of the Company as security for the ultimate payment of the principal and interest of the bonds."

(54). But if any bonds are due and any demand were necessary, your petitioner shows that the Secretary of the Treasury appears to have made it, as alleged by the Attorney-General in his bill, and that at least such bill is itself a demand, and, if maintainable, the prayer thereof for foreclosure sale is idle and futile, since at the farthest in six months from the filing of the same the proceedings thereof must, by explicit command of Congress, be followed or superseded by proceeding to have a forfeiture to the United States judicially enforced.

(55). Your petitioner calls attention to the suggestion filed by the Attorney-General in the third of the above entitled causes as to the extraordinary complications of titles and interests involved in the properties of said Union Pacific Railway Company, and the great length of time and probable litigation necessary to determine the same, and also to the same difficulties as shown in the bills of foreclosure and the answers in both the above entitled causes. And your petitioner submits that more than six months will be required for the ascertainment of what properties and interests may be sold in foreclosure proceedings in either the first or second of

the above causes, and that if the forfeiture to the United States under the Thurman Act is not already complete no sale could be had under any pending foreclosure proceedings until long after it becomes so, when no sale of the absolute property of the United States, without act of Congress can be had at all, and at which time no steps to foreclose, as mentioned in the Act of March 3rd, 1887, on any such property, will be necessary to protect the interest of the United States therein.

(56). Your petitioner admits that there may be doubt as to whether the foregoing forfeiture provision of the Thurman Act does not impair the obligations of the contract, but submits that it is supported by the fifth and sixth sections of the Act of July 1st, 1862, as heretofore construed by the Supreme Court. And further submits that if it does so impair the contract, a foreclosure sale would do so equally or in a greater degree. While if it does not impair the contract and is operative, it cannot now be followed by any immediate foreclosure sale without the substantial destruction of the interest of the United States in the property or proceeds; for the forfeiture includes the franchises, among which is the franchise to be a corporation; so that, after any forfeiture, there can be neither service upon nor judgment against said company in behalf of first mortgage bondholders or the United States, and all suits should abate, as there are no statutes to preserve the existence of the Company, even for winding up purposes. And it is submitted that if a sale were had under such circumstances, good faith on the part of the Government would require the Government to pay the first mortgage bonds out of the proceeds, including the sinking fund, hereinafter mentioned, and to limit any application thereof in its own behalf to such of the subsidy bonds as matured before the debtor was discharged from further obligation by ceasing to exist.

(57). The only remaining remedies of the United States against the properties of the Company are set forth in the fourth section of the Act of March 3, 1887, as follows:

"Sec. 4. That whenever, in the opinion of the President, it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage or other interests in any of the property of any or all of the several companies upon which a lien, mortgage, or other incumbrance, paramount to the right, title or interest of the United States for the same property, or any part of the same, may exist and be then lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such paramount lien, mortgage or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury; and the United States shall thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien or other incumbrance in respect of which such payment shall have been made. It shall be the duty of the Attorney-General, under the direction of the President, to take all such steps and proceedings, in the courts and otherwise, as shall be needful to redeem such lien, mortgage or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matters in this section mentioned, and to take steps to foreclose any mortgages or lien of the United States on any such railroad property."

(58). Your petitioner calls attention to facts as follows:

That the general scope of said section and of the section which follows it looks to the acquisition of other liens by the Government, and not to the sale of its own.

It authorizes foreclosure but not foreclosure sale.

That the remedy of the fifth section of the Act of 1862 was defective in that it did not expressly authorize the Secretary of the Treasury to take possession of the telegraph line as well as the railroad line for default.

That the sixth section of the same Act of 1862 could only work a reverter of the property and franchises granted to the Company by the United States, and that the forfeiture in the eleventh section of the Thurman Act was strictly limited to things derived from the United States, notwithstanding the ninth section of the same Act purported to give to the United States a lien upon all the property of the Company without regard to where it came from.

Also to the fact that said Union and Kansas Pacific Railroads had in the meantime constructed and acquired railroad extensions not bond-aided and which were not derived from the United States and upon which Congress had expressly allowed mortgages to be placed by other than the bond-aided companies.

In the light of the foregoing circumstances, the necessity for and limit to the scope of the Act of March 3rd, 1887, fully appear and are in harmony with then existing legislation, especially the Thurman Act, which it did not even purport to alter or amend.

(59). Your petitioner shows that if the Thurman Act is lawful and operative, there cannot be any further steps which, in a legal sense, are necessary to protect and defend any interest of the Government in property already forfeited absolutely to it.

(60. And your petitioner submits that the only liens which the Attorney-General is to foreclose under said Act of March 3rd, 1887, are such as the Government may have acquired and to which it became subrogated as therein contemplated, and such as were imposed in behalf of the United States under the ninth section of the Thurman Act, and which liens rest upon property technically not derived by said Union Pacific Railroad Company directly from the United States, and, therefore, not included in the reverter contemplated in the sixth section of the Act of 1862, or in the eleventh section aforesaid of the Thurman Act.

Your petitioner instances that the only way to extinguish the Union Pacific Railroad Company's interest in the Omaha bridge, and the Kansas Pacific Railway Company's interest in the road from the three hundred and ninety-fourth mile post through to Cheyenne, so that the Government would acquire the same and preserve the continuity and entirety of the road, is either in an

acquisition and a foreclosure of the mortgages which the Government allowed the companies to place upon said properties, or by a foreclosure of the lien in behalf of the United States declared in the Thurman Act as aforesaid; because neither of these properties nor the equity of redemption in them was derived from the United States and would not revert to it for breach of the condition of the sixth section of the Act of 1862 or by forfeiture under the eleventh section of the Thurman Act.

(61). Your petitioner shows that, except as aforesaid, no foreclosure proceedings in behalf of the United States are, in a legal sense, necessary or pertinent to protect and defend the interests of the United States as against the Company; and none whatever to protect the interests of the United States in anything derived by the Company from the United States, and submits that the protection designed to be afforded in said Act is against liability to loss in foreclosure of liens underlying the lien of the Government. These will be presently considered as the principal private obligation of the Union Pacific Railway Company.

SIXTH: OF THE OBLIGATIONS OF SAID BOND-AIDED PACIFIC RAILROAD COMPANIES DUE TO THE GOVERNMENT AS SUCH, AND IN WHICH THE PEOPLE OR ANY OF THEM AS SUCH HAVE NO INTEREST.

(62). This consists simply of the obligation to redeem the subsidy bonds as they mature. It is submitted that the redemption of the bonds would not discharge the companies or the roads from their public and quasi-public servitudes and obligations aforesaid.

PART THIRD.

OF THE PRIVATE INDEBTEDNESS OF SAID PACIFIC RAILROADS, AND MORE ESPECIALLY PERTINENT TO THE RIGHT OF YOUR PETITIONER TO INTERVENE IN THE SECOND OF THE ABOVE-ENTITLED CAUSES.

(63). Your petitioner shows that all the alleged private indebtedness of said Railroad Companies may be classified as follows:

First: The secured indebtedness, consisting of—

(a) First mortgage bonds on the bond-aided roads issued under the Act of July 2, 1864;

(b) Omaha bridge bonds, issued under the Act of February 24, 1871;

(c) First mortgage bonds on the Kansas Pacific Railroad from the three hundred and ninety-fourth mile-post west to Denver, and first mortgage bonds issued on the road from Denver to Cheyenne, both of which issues were authorized under the Act of March 3rd, 1869;

(d) Certain alleged land grant bonds purporting to be secured by mortgages of the lands granted to said companies by the United States and for any mortgage whereof your petitioner is unable to find any authority;

(e) Mortgages and pledges to secure bonds and notes in various trusts, made without any authority of Congress and since said Acts of 1873 and 1878, and which it is submitted were prohibited by said Acts and need not be considered except as several of them appear to have large margins of security, even if the incumbrances are valid;

(f) Guarantees of interest on bonds and dividends on stocks, rentals and the like of other railroad companies, all, as your petitioner is informed and believes, entered into since the Act of 1878 aforesaid, and not in

ordinary course of current business or in good faith and for value;

(g) A current floating indebtedness, not large, incurred in due and ordinary course of business.

Your petitioner shows that the first four classes aforesaid contain all the bonds which, by any possibility, can have any lien on the property of the Union Pacific Railroad Company in priority of the Government's lien.

(64). All the foregoing were issued prior to March 3rd, 1873, on which date an Act of Congress was passed forbidding the Union Pacific Railroad Company from issuing any new stock or making any mortgages or pledges on the property or future earnings of the Company without leave of Congress, except for funding and securing debt then existing or renewals thereof. This disability was not relieved by the consolidation of that Company with the Kansas Pacific Company, even if, after the Thurman Act, that consolidation were lawful.

(65). That the foregoing are also all the mortgages or pledges made prior to the date of said Thurman Act of May 7, 1878, which, in the ninth section thereof declared a lien upon all the property of said Union and Central Pacific Railroads of every description, for the payment of the indebtedness due or to become due to the United States and the payment of the sums required to be paid into the sinking fund, subject only to the provisions that the Act should not be construed as preventing a disposition of the assets in good faith for value in ordinary current business.

(66). Thereupon, in respect of all said private indebtedness, your petitioner submits that in any conflict of interest between the public and quasi-public duties of

the Pacific Railroad Companies and their private obligations, the preservation of the former is of paramount importance.

"The supreme object to be attained," say the Supreme Court (in United States v. Union Pacific Ry. Co., 160 U. S., 1) "was the maintenance and operation of both a railroad and telegraph line from the Missouri River to the Pacific Ocean and governmental aid was extended in order to accomplish a result so important to the whole country."

"We have seen," adds the Court, "that the object of giving governmental aid to the corporations named in the Act of 1862 was to promote the public interest and welfare by the construction and operation of a railroad and telegraph line to the use and benefit of which the Government should be entitled at all times, particularly in times of war, for postal, military, and other purposes."

Even earlier than this and when the United States sought to press its own financial claims and to compel the Company to reimburse the Government for the interest on the subsidy bonds, as the interest matured and was paid by the Government, the Supreme Court in case of The United States v. Union Pacific R. R. Co., 91 U. S., 72, elaborating that such a requirement might cripple the ability of the Company in the performance of its undertaking, said:

"Indeed the whole Act contains unmistakable evidence that if Congress was put to the necessity of accomplishing a great public enterprise through the instrumentality of private corporations, it took care that there should be no misunderstanding about the objects to be accomplished or the motives which influenced its action. If it had been equally explicit in the provisions regarding the bonds to be issued in aid of the road, there would have been no occasion for this suit."

The same Court, when afterwards it sustained the constitutionality of the Thurman Act creating the sinking fund, Union Pacific R. R. Co. v. United States, 99 U. S., 700, said:

"The fund to be created is not so much for the security of the creditors as the ultimate protection of the public and the corporators

* * * It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested."

And, again, in U. S. v. Western Un. Tel. Co., 50 F. R., 42, the Court (Mr. Justice Brewer) say with regard to this point:

"The Government is, it is true, pecuniarily interested as a second mortgagee, but a higher interest is that the administration of its franchises should redound to the general welfare, and not merely to the pecuniary interest of its grantee, or even of itself. The dollar is not always the test of the real interest. It may properly be sacrificed if anything of higher value be thereby attained. But whether the dollar be gained or lost, is not in a matter of this kind a question for the courts. It is for legislative branch, as representative of the popular will, to settle all such questions."

Your petitioner begs leave to show that this is also the understanding of the disinterested Railroad Companies and of Congress and the people. Stuyvesant Fish, President of the Illinois Central Railroad Company, said before the House Committee in February last:

"My endeavor is to put myself as far as I can in the position of the Government. If I stood to-day where the Government stands I would take all the liens on all the bond-aided roads and consolidate them as one thing. That is the best asset the Government has. But the question goes higher. It does not seem to me a question of what the Government can get in money, whether it is $25,000,000 or $45,000,000 or nothing at all. The question is, how can we best carry out the intention of the act of 1862, the act for which those lands were granted and under which those bonds were issued, and in consequence of which railroads were built from the East to the Missouri River—half a dozen of them—and so restore, as best we can, the great broad principle which underlies that act for the benefit of the Government Treasury and the people of the United States in giving them better and cheaper transportation, and putting upon an equal footing all the railroads that reach the Missouri River from the East. You will then have such a volume of business concentrated on the Union Pacific that it will be able to carry freight at a much smaller cost than any other transcontinental line. It will stand somewhat in the position of the Erie Canal and the Great Lakes as a regulator of freights between Chicago and New York. * * * The question I should like to place before the committee, and I have no doubt you have it in your minds, is the importance of taking care of the commercial and shipping interests of that section of the country through which these roads run. There is an opportunity, through reorganization of these roads, perhaps, to stop the waste of capital in building unnecessary parallel lines."

The Senate Committee on Pacific Railroads has by its Chairman, Senator Gear, reported a bill providing for the adjustment of the relations of the road to the United States by a Commission, in which it is said:

"Even if no other considerations existed affecting the subject the Committee would consider an effort at amicable adjustment through and by means of such a commission abundantly justified by the consid-

eration that if a settlement should be made under such a bill there would be secured to all present and future connections of the roads involved the important privileges subject to which any settlement under this act is required to be made, viz., that the companies, if such settlement should be made under the act, and their successors, lessees and assigns should co-operate in making track connections with all railroads of other companies now or hereafter built to points of junction with their bond-aided roads—and that at any point where two or more should connect." Any preference or predjudice for against either should be unlawful. "These privileges could not be acquired as a result of the foreclosure of the paramount mortgage upon the property and the possibility of securing * * * such privileges for all time to come is certainly worth vastly more than an effort to reach" it could cost.

"In any settlement or agreement which might be made with the companies under the authority of Congress, these provisions should be inserted in order to make sure that the roads affected by the settlement were kept open as public highways in the future for the benefit of all present or future railway connections."

In the report of the author of the Commission bill introduced in the House of Representatives in February last with the support of the Committee, it is said:

"If this" (foreclosure) "should occur the most valuable and important part of this great line of railroad across the continent will have passed into other hands without the preservation to the Government of many valuable rights and privileges it now has and which will be retained by it by the passage of this bill."

It does not seem to have occurred to these committees while thus lamenting the loss and deprivation to be sustained in foreclosure either by or against the United States that the Government can be deprived of nothing without its consent and that no bills are necessary to prevent its spoilation of valuable rights and privileges by the Courts without the authority of Congress.

The report of the minority of the same Committee said:

"It should be first noticed that the Attorney-General does not purport to have been guided so much by his duties as the law officer of the Government as he does by his abilities as a trader. His first public announcement of what he had done rested his justification on the guaranteed bid he had secured and the deposit he had obtained. The legal procedure he has instituted as Attorney-General is all ancillary and subordinate to this. But the Attorney-General's authority can not depend upon the price—if he could sell out for $46,000,000, then, equally, he can do so for 46 cents; and his office does not empower him to sell at all.

"But the Attorney-General's procedure in pursuance of the agreement was more in excess of his authority than was the agreement itself-for he did not merely bring foreclosure proceedings in behalf of the Government's lien, but filed his appearance for the United States in the pending foreclosure suit in behalf of the first mortgage bonds, whose holders assert a lien in priority to the lien of the Government, and, as this minority is informed and believes, his bills were actually filed in

this prior foreclosure suit. He does not so much foreclose for the Government as he subjects the Government's interest to foreclosure. For his want of authority to do this, attention is called to a few decisions of the Supreme Court of the United States:

'Without an act of Congress no direct proceedings will lie at the suit of an individual against the United States or its property, and no officer of the Government can waive its privilege in this respect nor lawfully consent that such a suit may be prosecuted so as to bind the Government. (Headnote (in L. Ed.) by Mr. Justice Bradley, who gave the opinion in Carr *v.* United States, 98 U. S., 433.)

'Comptrollers of the Treasurery can not submit the rights of the Government to litigation in any court without some express provision of law. (Case *v.* Terrell, 11 Wall., 199.)

'Claims against and liens upon property of the United States are incapable of enforcement except when such property becomes subject to the control of the court. (The (ship) *Siren v.* United States, 7 Wall., 152.)

'Individuals, as well as courts, must take notice of the extent of authority conferred by law upon a person acting in an official capacity. (Hawkins *v.* United States, 96 U. S., 689; Whitsides *v.* United States, 93 U. S., 247.)

'When the property of the Government is concerned it is proper for the attorney for the United States to intervene by way of suggestion, and in such case if the suit be not stayed altogether the court will adjust its judgment according to the rights declared on the part of the Government thus intervening. (Stanley *v.* Schwalby, 147 U. S., 508, 513 and citations; see also 7 Cranch, 116-147, the leading case.)

'When a State or the Government is a necessary party defendant, the court will decline jurisdiction, and the proceedings will be dismissed. (Cunningham *v.* Railroad Company, 109 U. S., 446-451.)''

It is submitted that the supreme object of the United States in behalf of the Government and the people, in creating this Company and endowing it with fabulous subsidy, cannot be defeated by any private obligations which the Company was allowed to contract, and that the holders of such obligations took them with that understanding. If not, it was sufficiently indicated in the Act of March 3rd, 1873, which declared—

"The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation."

which were the only proceedings, if any, by which it could be attempted to separate the property from the franchise without making the United States a party.

OF THE FIRST MORTGAGE BONDS ISSUED UNDER AUTHORITY OF SECTION TEN OF THE ACT OF JULY 2, 1864.

(67). Presumably it will not be contended that these bonds could foreclose against and without the consent of the United States, but it may be asserted that the United States have consented, which your petitioner begs leave to consider later.

(68) Your petitioner submits that the first mortgage bonds are not foreclosable under present legislation and especially not against the United States or by foreclosure sale.

That it was not intended they should be, and provision was made which is still sufficient to render it unnecessary, and the Government itself is required to pay them, if necessary, to prevent such foreclosure. The Company is ready, able, and willing, and has offered to pay them if the Government will subordinate its claim to enable the Company to do so. That no mortgage deed was authorized under which foreclosure can be had, but a substitute remedy was afforded.

That especially no such foreclosure is authorized to bar or oust the interests of United States, and no law officer of the Government is authorized to subject those interests to such procedings, and if a foreclosure sale can be had it is not necessary to make the United States a party and bar them, for the property will demonstrably bring more than enough to pay the first mortgage bonds without doing so.

(69). In respect of the foregoing, your petitioner begs leave to point out more in detail as follows:

The Union Pacific was authorized to issue stock for cash at par for the full cost of its road up to one hundred millions, which was more than it cost. That Company and the Kansas Pacific were loaned thirty-three millions of six per cent. Government bonds for thirty years, without paying current interest, and were given outright a

land grant thought to be worth as much as the bonds, and then they were allowed to issue their first mortgage bonds which in some instances, especially in the case of the Sioux City and Pacific Company, were, all of them, distributed as a dividend to the stockholders for nothing.

(70). Your petitioner shows that the resources aforesaid are still ample. There are about sixty-one millions outstanding stock of the consolidated Union Pacific Railway Company, whose constituents received for stock issued not one hundred per cent. of the par thereof in money, as required by the Acts aforesaid, but, as your petitioner is informed and believes, only sixteen per cent. thereof.

That when the Government was advised that the stock had not been paid for, Congress passed the Act of March 3rd, 1873, by which the Attorney-General was directed to bring suit against certain of the stockholders therein described to recover the unpaid stock subscriptions for the benefit of the Company, which he did, and apparently failed to maintain it, only because the proceedings were premature, as the Company at that time was not in default to the United States, and objected to the suit. The United States v. The Union Pacific Railroad Company, 98 U. S., 569.

Such suit is now maintainable, and, in addition to that, the Company is insolvent, and in the hands of receivers, who may be directed by this Court to bring like suits in behalf of creditors, whether the Company consents or not. The unpaid eighty-four per centum on said capital stock of $61,000,000 should yield if collectible nearly twice the amount of said first mortgage bonds.

(71). Your petitioner shows that, for the purpose of protecting and doing complete justice to the first mortgage bondholders of said Union Pacific Railway Company, said Act of July 2nd, 1864, gave to such bonds a

first lien upon the roads, property, and equipment of the companies respectively issuing said bonds, to which the lien of the United States should be subordinated.

(72). That the prior Act of July 1st, 1862, did not contemplate any first mortgage bonds, and under Sectio 6 thereof all compensation for services rendered for the Government was to be applied to the payment of subsidy bonds; but when said first mortgage bonds were authorized, said prior Act was modified by Section 5 of said Act of July 2nd, 1864, so that only one-half of said Goverernment compensation was to be retained by the Government and so applied, whereby relief was afforded to said companies to enable them to meet the interest to accrue on said first mortgage bonds.

(73). That by Section 2 of the Act of 1878 (the Thurman Act), the right of the Government to retain the whole of said compensation was restored, and said companies were required to supplement the same with the payment of certain other sums until the whole should equal twenty-five per centum of the net earnings of said companies respectively; but again, for the relief of said companies, in view of their obligations on first mortgage bonds, it was provided, in Section 2nd of said Thurman Act, that net earnings should not include interest paid on first mortgage bonds, but should be ascertained after deducting such interest.

(74). And further, for the protection of such first mortgage bondholders, Section 5 of said Thurman Act made it the duty of the Secretary of the Treasury to remit so much of all compensation to be retained by the Government, or other moneys to be paid to the Government, by said companies as should be necessary to enable said companies, according to the terms of said Act, to pay interest on its said first mortgage bonds.

It was held by a divided Court in Union Pacific Railroad Co. v. United States, 99 U. S., 402, that the five per cent. of net earnings reserved under the Act of July 1st, 1862, was, by the Act of July 2nd, 1864, subordinated to the payment of interest on the first mortgage bonds.

(75). And finally, in Section 3 of the Thurman Act, a sinking fund was created to be made up in whole or in part of the additional half of compensation for Government services, which said Act allowed the Government to retain, on which fund thus to be accumulated the first mortgage bondholders were, by Section 8 of said Act, given a first lien for the payment of the principal thereof, according to their rights in the premises.

(76). In addition to the foregoing, your petitioner shows that the present value of so much of the sinking fund aforesaid as pertains to the Union Pacific Railway Company, and on which the first mortgage bonds have a first lien, is over seventeen million dollars, which is considerably more than the whole amount of said first mortgage bonds of said company that have as yet matured and, if applied to the payment of such bonds and others as they mature, would cancel all default in respect thereof and leave only about an equal amount outstanding, which said fund, if continued, should also speedily extinguish under the consequent constantly reducing interest charge thereon.

(77). And your petitioner says that a reorganization committee, representing the stockholders of said company, offered in their behalf to committees of the last Congress, as hereinafter mentioned, to pay off the balance of said first mortgage bonds, if the sinking fund could be applied thereto, and if the United States would extend its own claims and reduce the interest thereon,

which your petitioner submits the United States, under its subordinated lien, should do if the United States do not themselves pay off said first mortgage bonds.

(78). By the Act known as the Act of March 3, 1887, the Secretary of the Treasury was authorized to invest the sinking fund in purchases of these same first mortgage bonds, which constituted a lien upon it. The Act further contemplated that if such bonds were outstanding, they might endanger the security of the United States, and that the President should direct the Secretary of the Treasury to purchase and the Attorney-General to take all steps and proceedings needful to redeem the same, which, as hereinbefore shown, included more than first mortgage bonds on bond-subsidized portions of the road, and covered road over which the Government had no lien, except under the Thurman Act, and on which first mortgage bonds, therefore, could foreclose. From all of which it is submitted an intention appears on the part of the United States to protect the lien at least of said first mortgage bonds.

(79). No mortgage deed to secure said bonds was authorized. Your petitioner shows that the Government's lien was created by the Act of July 1st, 1862, and was merely subordinated to the lien of the first mortgage bonds authorized to be issued under the Act of July 2nd, 1864, which Act, as against the United States, is to be strictly construed and did not authorize the making of any mortgages as security for said first mortgage bonds, but made said bonds themselves in the issuance thereof ipso facto liens upon the property, just like the lien of the Government for the subsidy bonds, which was subordinated thereto.

(80). The Act of 1862 in respect of the lien of the Government bonds is as follows:

"The issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued."

And the amendment of 1864, authorizing the first mortgage bonds, is as follows:

"Sec. 10. AND BE IT FURTHER ENACTED, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property and equipments."

(81). It is submitted that the word "tenor," when used of the two series of bonds, means that they are to be of contemporaneous issue and to have the same kind of a hold or tenor on the property, and that there was no more right to make a mortgage to secure the first bonds than to require one to secure the seconds.

The Supreme Court in Union Pacific R. R. Co. v. United States, 99 U. S., 402, say:

"It may perhaps be urged that the first mortgage bondholders have no lien on the net earnings, but they have the same lien that the Government has Both liens are co-extensive with the whole property of the company, so far at least as relates to the railroad and telegraph lines and their equipment, and all property appurtenant thereto."

That the word "mortgage" does not imply that any such instrument is to be made; for it is used of both liens in the acts quoted above and in the Act of March 3rd, 1887, and constantly by the Supreme Court in the decisions herein cited.

(82). That it could not have intended that the company was to make a real estate mortgage of the railroad,

appears for several reasons. The Company had no evidence of title in the form of any conveyance to itself. No patents were to issue to the company for the strip of land constituting the location, but only for the lands on each side of it (Act July 1st, 1862, Sect. 4). The right of way was granted as an easement by the Act of 1862.

When the bonds began to issue it was impossible to know for several years where the complete location should be or how much road, and where to end, each company could build. Nothing could be described so as to be identified in a mortgage, at least there was no authority to describe anything in a mortgage. Besides, it was expected that the bonds would be issued in small lots extending over a period of thirteen years, with consequent different dates of maturity, and as was contended in United States v. Union Pacific R. R. Co., 91 U. S., 72, failure to pay each bond constitutes a separate and independent default. Especially was no mortgage authorized which should contain a power of sale, or which, by strict foreclosure, should bar the right of the United States to redeem, or which by any possibility could defeat the purpose of the Government in aiding said road. The companies were allowed to issue the bonds one hundred miles in advance of construction, and the Act contemplated (Sec. 17, Act 1862) that on a failure of the companies to complete the road, the United States should take possession and complete it, which purpose was a part of the security of said bonds and was inconsistent with the foreclosure of any mortgage in their behalf that could prevent such completion, and such mortgage and foreclosure are equally inconsistent with the present right of the United States to take possession of the roads and devote their whole income to putting any part of either of them in repair.

(83). That though the existence of alleged mortgages to secure the first mortgage bonds was noticed in

the preamble of the Thurman Act, yet in the same paragraphs the lien of the bonds was mentioned as limited to the provisions of the acts aforesaid.

(84). That such mortgages, especially if containing any power of sale would be wholly inconsistent with the reverters and forfeitures and other remedies reserved and secured to the United States, and, with the public and private duties imposed upon said company and as conveyances, conditional or otherwise, were ultra vires.

That if any such mortages have been made which do not vary the statutory lien of said bonds, they were wholly unnecessary and not intended; and if they do not vary it, they are wholly unauthorized.

(85). The Act of July 2nd, 1864, gave to said first mortgage bonds no lien on any of the rights, privileges, and franchises of said Union Pacific Railway Company or its predecessors, but only upon the roads, property, and equipment of said companies, which properties are only appurtenant to the franchises. The servitudes imposed upon said properties in behalf of the United States and the public were not subordinated to the lien of said mortgage bonds.

(86). That such mortgages, in the absence of any statutory or contract provisions for the foreclosure, and on a road running through States and Territories which were to become States, all with different railroad and mortgage laws, was more like what is known in England as a mortgage of the "undertaking," and that the security therefor to be of the same tenor as that of the United States requires that, in the event of default in the payment of any of said bonds, the holders thereof should, as a contract right, be entitled to have some trustee or trustees appointed for them by the Court, with the same powers that were conferred upon the Secretary of the

Treasury when there should be default in the payment of the subsidy bonds as set forth in Section 5 of said Act of 1862; that is to say, with power to take possession not only of everything covered by their lien, to-wit, "the respective roads, property, and equipment" of said companies (Sec. 10, Act of 1864), but also "with all the rights, functions, immunities, and appurtenances thereunto belonging." (Sec. 5, Act 1862). Not otherwise, it is submitted, can the mortgaged property be operated for the benefit of said first mortgage bondholders and the lien of the United States completely subordinated to the prior lien of the same tenor. And such trustee, so to be appointed, should be required to operate said road just as the present receivers are now doing, and to devote the whole income to the payment of the interest as it accrues and to the principal as it matures on each of said first mortgage bonds not paid by the sinking fund. And the right of the United States to forfeiture, foreclosure, or reverter, or to retain compensation for services, or any part of the earnings, should be subordinated thereto. Such remedy as this,—the right to its full earning capacity, is all that any creditor or owner can get out of any quasi-public corporation which the public has a right to have operated, and especially is it all that the safety and declared purposes of the Government can permit to any mortgagee or creditor of this road.

(87). But your petitioner submits that, even if the lien of said first mortgage bonds may be enforced against the companies by strict foreclosure, such proceedings could not bar the United States. Presumably every taker of the bonds was aware of the law as a fact that the United States cannot be sued, nor can their properties be attacked by judicial proceedings without their express consent by act of Congress; and, as herein elsewhere shown, no law officer of the Government can sub-

ject its property to such proceedings without like authority. If the first mortgage bondholders have a right, they have no remedy, and the court cannot give to them a remedy against the Government.

(88). Your petitioner further shows that it would not be necessary to make the United States a party and bar it in order to have the sale yield more than sufficient to pay the first mortgage bonds, for that nearly all of said bonds are held or controlled by a Reorganization Committee, hereinafter mentioned, which has also assembled substantially all the stock of said company, and, as your petitioner is informed and believes, has instituted or caused to be instituted or has adopted foreclosure proceedings pending in this Court in behalf of the lien securing said bonds, and has agreed with the Attorney-General to bid about forty-six millions for the lien of the United States on said Union Pacific Railway and sinking fund in any foreclosure sale in said proceedings, so that a great value in said property above the lien of the first mortgage bonds demonstrably exists and from which it is necessarily inferred that, in any foreclosure sale in behalf of the first mortgage bonds, an amount far in excess of the sum required to pay any balance of first mortgage bonds would be realized without making the United States a party or cutting off its interest. The purchase price would be almost inevitably the amount of said first mortgage bonds and would be paid in a surrender and cancellation thereof; it would not be much if anything more, since the surplus would go to the United States, whose right to redeem would not be cut off and it would not be much, if anything, less, for fear that the Government might redeem from the purchaser without paying the balance of the bonds. This would release the sinking fund to the United States.

(89). The rights of the United States as such would then be only the powers, coupled with an interest, hereinbefore set forth, and the right to redeem. The purchaser would be secure; he could only be disturbed by the repayment of his money with six per cent. interest, and, in the meantime, would enjoy the whole use and income of the property, subject only to the powers coupled with interests aforesaid and the rights of the public therein as they have heretofore existed, and as it was designed they should be perpetuated.

(90). So well understood does this appear to be that the defaulted first mortgage bonds continue to be worth about par on the market, in so far as there are any for sale, and the Reorganization Committee aforesaid is glad to secure a continued payment of the interest upon such as are submitted to their control; and in their scheme of reorganization they propose that such bonds shall carry a large premium in new securities, while the stock of said company, though subject to an assessment, has a substantial market value because of the expectation that an interest, representative thereof, in the form of new stocks, will survive all anticipated foreclosures whatsoever.

(91). Wherefore, in all and singular the foregoing, your petitioner submits that no foreclosure sale in behalf of said first mortgage bonds is lawful or necessary; and that especially is there no authority in law and no necessity for making the United States a party to proceedings therefor.

Your petitioner asks but little consideration of the remaining private obligations of the Company as above classified. The petitioner finds no authority for the

making of the land grant mortgages, and they seem to be inconsistent with the reverter secured to the United States and to the rights which the public were to have to enter upon all said lands which should not be disposed of within three years, at substantially Government rates or prices. The objection to the making of any such mortgage before the location of the road was determined and the length of it, and what lands therefore should appertain to the respective companies, forbade any mortgage until the roads should be completed, and it was not contemplated that this would be accomplished in less than thirteen years, while at the end of three years the lands were to be open to entry as aforesaid, and were subject to forfeiture and reverter if the road should not be completed by the Company.

(92). It is submitted that the idea of a mortgage on the land is almost as inconsistent with the dominant idea of the whole enterprise as any specific mortgage on the railroad to secure the first mortgage bonds would be. But in this connection, your petitioner begs leave to call attention to an important fact, that the consolidated mortgage covering the Kansas Pacific road from the 394th mile-post west by way of Denver to Cheyenne appears to be also secured by substantially all the outstanding bonds on the Denver Extension and the Cheyenne Division and by substantially all of the Income Bonds on the Eastern and Middle Division of the Kansas Pacific. The Income Bonds, though unauthorized by any express legislation, were yet prior in date to the prohibitory act against further issues of bonds of March 3rd, 1873, and the Consolidated Mortgage, though subsequent to that Act, was made by the Kansas Pacific Company which was not included in said prohibitory act.

In 1878 the Thurman Act was passed, which practically forbade the Company from incurring liability, except for value, in good faith, and the ordinary course of current business; and the consolidation of the Union and Kansas Pacific, if lawful at all, did not take place till 1880, and presumably the Union Pacific did not assume any obligations of the Kansas Pacific by such consolidation.

(93). But in the worst aspect, and assuming that the Kansas Pacific could mortgage its lands under the consolidated mortgage, the estimated value of that land is nearly sufficient to pay the outstanding bonds, of about eleven millions, thereby secured, and thereby to release for cancellation the first mortgage on the Denver Extension and Cheyenne Division, and all the Income Bonds too for cancellation, thus preserving the entirety and continuity of the road as contemplated without imposing any further burdensome charge upon the Government in assuming said bonds.

(94). The authorized Omaha bridge bonds outstanding are not considerable. Besides, several of the collateral trusts of the company, to which, even if lawful, the lien of the Thurman Act should attach, afford margins of value for discharging the indebtedness secured.

(95). The remaining floating indebtedness to be noticed is divisible into two classes: One represents guarantees of dividends on stocks and interest on bonds of other railroads to an amount which it is said is the sole cause of the bankruptcy and insolvency of the Union Pacific Company, and, it is claimed, necessitates a foreclosure and a wiping out of the present Company to avoid these liabilities. The answer to which, your petitioner

submits, is that all such undertakings are in direct violation of the restrictions imposed by the Thurman Act, and are presumably utterly void. Such obligations, therefore, of the Union Pacific Railway Company offer no reason nor necessity for any foreclosure or other extinction of that Company.

(96). The remaining floating debt, unsecured, incurred in lawful course of current business, is not large. It has no legal protection, since it will be wiped out without recompense in any forfeiture or foreclosure. Its payment, therefore, may be postponed, but it is entitled to consideration more than are the stockholders in reorganization schemes to be had in pursuance of foreclosure.

PART FOUR.

OF THE RIGHTS OF THE UNION PACIFIC RAILWAY COMPANY ESPECIALLY PERTINENT TO YOUR PETITIONER'S RIGHT TO INTERVENE IN THE THIRD OF THE ABOVE ENTITLED SUITS.

(97). Your petitioner shows that said Union Pacific Railway Company, its constituents and predecessors, were endowed with certain peculiar and inalienable privileges and immunities to enable it to perform its obligations to the United States and to the public, as hereinbefore set forth.

(98). Your petitioner submits that said Company, having accepted the acts of Congress aforesaid, undertook to perform the duties thereby imposed upon it, and that it should protect and defend its ability to do so and that under said act known as that of March 3rd, 1873, as construed by the Supreme Court of the United States in the case of Union Pacific Railroad Company v. Hall,

91 U. S., 343, your petitioner is entitled to the writ of mandamus from this Court to compel said Union Pacific Railroad Company to operate its said railroad as required by law, which your petitioner submits requires said Company to defend according to its rights against foreclosure in the above entitled suits, to the end that your petitioner's rights and interests therein as hereinbefore set forth may be preserved.

(99). But your petitioner further says that nearly all of the stock of said corporation has been assembled by the Reorganization Committee aforesaid, which Committee has also assembled nearly all the first mortgage bonds for the purpose, among others and as hereinafter charged, of instituting or causing to be instituted foreclosure proceedings in behalf of said first mortgage bonds, and in which all junior liens and interests shall be wiped out and all the floating debts and contracts, all the duties to the United States and to the public, and all the rights and immunities of said company; and that in pursuance thereof there shall be a reorganization in which all the properties of said Union Pacific Railway Company shall be vested in a new corporation, freed from all obligations hereinbefore set forth, pertaining to said Union Pacific Railway Company, and in which new corporation the owners of the stock of the present company so assembled by said Committee shall have new stock.

(100). That said Committee have thus and otherwise, as your petitioner is informed and believes, acquired control of said Union Pacific Railway Company, its officers and directorate, whereby said company is made to cooperate in the purposes of said Reorganization Committee, and to that end abandon all defence of its rights, privileges, franchises, and immunities in the premises.

(101). Wherefore, as well as because of your petitioner's rights to the writ of mandamus, your petitioner

as standing herein to make defence for said company or to compel said company to make defence for itself of its rights, powers, properties, and immunities so that it may perform its duties aforesaid and that the interests of your petitioner may be protected.

(102). Your petitioner submits that the faith of the United States is pledged to the Union Pacific Railway Company and to the public neither themselves to foreclose by sale, nor to permit any foreclosure and extinction of that Company by or in behalf of first mortgage bonds.

(103). Your petitioner submits that under a comprehensive construction of the Acts of Congress hereinbefore referred to, the United States occupy a twofold relation to said Pacific Railroad Companies which were created and aided as aforesaid; one in which, as sovereign, the Government holds in trust the obligations of said Companies to perform and to maintain their ability to perform their duties to the public as well as to the United States, and the other relation in which the United States are simply a contract creditor.

(104). The constitutionality of the Thurman Act, which took vast sums of money from this Company for sinking fund purposes, was put upon the following grounds in the opinion of the Supreme Court in Union Pacific R. R. Co. v. U. S., 99 U. S., 700:

"The United States occupy towards this Corporation a twofold relation: that of sovereign and that of creditor. U. S. v. R. R. Co. (ante-143.

"Out of regard to the rights of the subsequent lienholders and stockholders, it is not only their right, but their duty, as sovereign to see to it that the current stockholders do not, in the administration of the affairs of the Corporation, appropriate to their own use that which in equity belongs to others.

"The fund to be created is not so much for the security of the creditors as the ultimate protection of the public and the corporators.

"To our minds it is a matter of no consequence that the Secretary of the Treasury is made the sinking fund agent and the Treasury of the

United States the depository, or that the investment is to be made in the public funds of the United States.

"Neither is it a fatal objection that the half of the earnings for services rendered the Government, which by the Act of 1864 was to be paid to the Companies, is put into this fund. The Government is not released from the payment. While the money is retained, it is only that it may be put into the fund, which, although kept in the Treasury, is owned by the Company.

"It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested, and adds another guaranty to the permanent and lasting value of its vast amount of securities."

(105). That Act took the moneys which belonged to the Railroad Company and withheld the moneys due from the United States to the Railroad Company, and invested them at high premiums in securities of the United States, bearing a low rate of interest, which were continually shrinking as they approached maturity; and thus in the end the Act bankrupts the Union Pacific in the payment of its first mortgage bonds; for the fund is more than sufficient to pay every first mortgage bond that has matured; and that if the Government had credited the Company with the same interest on the fund which the Government was charging the Company on its own bonds, and the same rate the Company was paying on its first mortgage bonds, the fund should be about sufficient to pay all of the latter bonds as they mature. It is submitted that the United States cannot refuse to pay the bonds while that money lasts, nor can its officers conspire with the first mortgage bondholders in a foreclosure for the non-payment.

(106). In addition to that, the Thurman Act created out of whole cloth a lien upon all of the property of the Union Pacific Railroad of every description and from whatever source derived, and then declared the road a bankrupt and published the law that nobody should trust it except in due course of current business.

(107). Before that, by the Act of March 3rd, 1873, the United States forbade the Company from issuing any more stock, though it was not nearly up to its authorized limit and never has been; and also forbade it from issuing any new securities whatever, except in renewal of existing obligations. Under these conditions, bankruptcy would seem to be inevitable however much money the Company might earn or however much its property enhance in value.

It has been a common thing for the United States from time to time to direct the withholding of other moneys due from the Departments to the railroad companies, and of imposing onerous duties upon the companies without compensation, and directing the companies to sue if they objected. (See Act March 3, 1875. Act of April 30, 1878.)

(108). Your petitioner submits that it is manifest that the Government desired to avoid the construction or operation of the roads as a governmental foreclosure, but did desire to have them constructed and operated for use of the Government, especially in time of war, and to promote the public welfare at all times by agencies over which the Government should retain complete control.

(109). In addition to the foregoing acts of sovereign protection, your petitioner begs leave to cite that the Government has appointed meetings of the stockholders of the Union Pacific and ordered them to elect directors (Act of April 10, 1869.) It has appointed boards of eminent citizens to examine the condition of the road and compelled the companies to pay ten dollars a day to each member. It has authorized the Attorney-General to demand and receive security from the Union Pacific Company for the building of its road, and for the same purpose has required the President to withhold the sub-

sidy bonds to which the companies were entitled (same Act.) It has authorized the Secretary of the Treasury to examine the book records and correspondence, and all other documents of the Union Pacific Company, at will. (Act of March 3, 1873.) It has expressly legislated the Company and its creditors outside of the pale and remedies of the bankrupt law and forbade the Company to pay dividends (same Act). It has created new offices like that of Auditor of Railroad Accounts (Act June 19, 1878), afterwards called Commissioner of Railroads, to exercise a supervision over said Railroad Company, and to require from it further reports and statements of its conditions and operations. It has directed investigations to see if the Company has committed penal offences or become subject to punishment and forfeiture (Act of April 12th, 1869.) It has released it from building telegraph lines as a matter of contract, and has imposed such building without consideration under its reserved sovereign powers in behalf of the Government and the people (United States v. Union Pacific R. R. Co., 160 U. S. 1). It has enacted special criminal legislation applicable only to the directors, officers, and agents of these companies to prevent the use by the companies of their own funds, and to compel them to perform the special duties, secured to the public, and has imposed punitive damages upon the Company for violation (Thurman Act, Sec. 6, Act of June 20, 1874). And it has given to every citizen of the Republic, whether he has any interest or not (Union Pacific R. R. Co. v Hall, 91 U S, 343), a right to a writ of mandamus in any Federal Court having jurisdiction to compel the Company to operate its road as required by law (Act March 3d, 1873), and from the beginning it reserved to itself the power of life and death over the Company to secure the road to itself in time of war and to promote the public welfare.

(110). Your petitioner begs leave to incorporate, as statement herein, and to show that there cannot be a sale of said railroads to companies or to men who are under no special obligation to the Government or the people, the decision of the Supreme Court in the recent case of—

United States v. Union Pacific Ry. Co., 160 U. S., 1.

"In our judgment, it is not difficult to ascertain the intention of Congress in passing the acts of July 1, 1862, and the amendatory act of July 2, 1864, Chap. 216. The supreme object to be attained was the maintenance and operation of both a railroad and telegraph line from the Missouri River to the Pacific Ocean, and governmental aid was extended in order to accomplish a result so important to the whole country."

(After epitomizing the first 18 sections) "These and other provisions are wholly inconsistent with the idea that the Union Pacific Railroad Company could have fulfilled its obligations to the government by simply constructing a railroad, without making any provision whatever for the construction, maintenance or operation of a telegraph line, thereby leaving all communication by telegraph along its route to the absolute control of private corporations deriving no corporate authority from the national government, and whose operations would not ordinarily be subjected to national supervision."

"We have seen that the object of giving governmental aid to the corporations named in the act of 1862 was to promote the public interest and welfare by the construction and operation of a railroad and telegraph line, to the use and benefit of which the government should be entitled at all times, particularly in the time of war, for postal, military and other purposes.

"In this view it must be held that by its reservation of authority to add to, alter, amend or repeal the act in question, whenever it choose so to do, Congress, subject to the limitation that rights actually vested or transactions fully consummated could not be disturbed, intended to keep within its control the entire subject of railroad and telegraphic communication between the Missouri river and the Pacific ocean, through the agency of corporations created by it, or that had accepted the bounty of the Government. It was never intended that the railroad companies accepting such bounties should be able, by any contract or arrangement with telegraph companies, to discharge themselves, for all time and beyond the authority of Congress otherwise to provide, from the obligation to exercise, by their officers and agents exclusively, the telegraphic franchises received by them from the national government

"It was suggested in argument that the objects of the acts of 1862 could be fully accomplished by means of a telegraph company incorporated by one of the States, and which, by placing its lines on the route of the railroad, could meet all the demands, as well of the railroad company as of the government and the general public. But this suggestion can have no weight in the present inquiry. For if, as intimated, the execution of the act of 1888 will result in no real good to the general public, and may even be injurious to the pecuniary interests which the government has in the Union Pacific Railway and its branches, that is a ques-

tion of public policy, with which the judiciary is not concerned, and the responsibility for which is with another branch of the government."

"We perceive no escape from the conclusion that it is entirely competent for Congress to add to, alter, or amend the acts of 1862 and 1864, so as to require the Union Pacific Railway Company, possessing the rights and powers of its constituent companies to maintain and operate, by and through its own officers and employees, telegraph lines for railroad, governmental, commercial, and other purposes, and to exercise, itself and alone, all the telegraph franchises conferred upon it. It is enjoying the bounty of the government subject to the condition, among others, that it will perform these duties whenever so required by Congress.

"The purposes of the 4th section of the Idaho act is quite apparent. Its effect was, as we have heretofore said, to relieve each of the railroad companies named in the act of 1862 from any present obligation to construct a telegraph line on its roadway, by means of an 'arrangement' with the United States Telegraph Company for the construction of such a line. But no arrangement could be legally made under that act which tended in any degree to defeat the great objects of the acts of 1862, and the act amendatory thereof, of July 2, 1864, Chap. 216. The act of 1862 did not authorize the railroad company to agree that it would not itself, at some future time, construct and operate a telegraph line for the use of the government and the people. Nor did it, by terms or implication, repeal or modify the clause in that act by which Congress expressly reserved the power to add to, alter, amend, or repeal, the latter act, having due regard to the rights of the railway companies named in it. Certainly it could never be held that a due regard to the rights of either the railroad company or of any corporation claiming under it required that the government, charged by the Constitution with the duty of regulating interstate commerce, should permit the railroad company receiving national aid to invest a corporation, not deriving its authority from the United States, with the exclusive right to enjoy its roadway—a national highway—for purposes of telegraphic communication between the States."

(111). Your petitioner shows that there are apparently but two places in all the legislation of Congress touching the premises, in which it is contemplated that any other companies than those herein referred to might come into possession of said road.

(112). In the last part of the 15th Section of the Act of July 1st, 1862, already hereinbefore quoted as the principal enactment on which this petitioner relies for standing, it is said:—

"Wherever the word Company is used in this act, it shall be construed to embrace the words, their associates, successors, and assigns, the same as if the words had been properly added thereto."

(113). These words in a conveyance to a quasi-public corporation simply limit the estate but do not authorize

a transfer of it. Except this, and as stated in the next section which authorizes the consolidation of any two or more of the companies mentioned in the Act, successors and assigns are not contemplated in the Act. It is submitted that while such consolidation is the only succession authorized (and there can be none without the authority of the creating sovereign), it is also the only succession contemplated. Otherwise, by the express terms of the Act, the successor would have to assume not only all the public and quasi-public duties, but the first mortgage bond and subsidy indebtedness to the United States too, which pertained to and bankrupted its predecessor.

(114). The other place is Section 6 of the Act of June 19th, 1878, which created the office of Auditor of Railroad Accounts, and required the bond-aided roads to make reports to him, and said:

"This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies."

which it is submitted was limited to the only "lawful" succession then authorized, that arising from consolidations between the companies themselves.

(115). Your petitioner begs leave to emphasize that there are but three possible or authorized destinies for this road under the law as it exists which can secure "the supreme objects to be attained" in its creation, and they embrace all the right to succession with which the sovereign creator of the Union Pacific Company endowed it.

First: Its own perpetual existence;

Second: Consolidation with any of the other bond-aided roads that were subject to like duties; and

Third: Forfeiture to the United States.

(116). These are all that, according to the title of the Act can "secure to the Government * * * for postal and military purposes * * * a railroad * * *

from the Missouri River to the Pacific Ocean," and according to the Act that "the whole line * * shall be operated * * so far as the public and government are concerned * * * as one connected continuous line," and always subject to this:—

"And the better to accomplish the objects of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend or repeal this act." Sec. 18, Act July 1, 1862.

(117). Your petitioner shows that forfeiture to the United States, even if insisted upon, would not be so hard upon and disastrous to the companies as foreclosure sales and said bond-aided companies are or should be equally interested in opposing any sale in the premises. By existing laws, the Secretary of the Treasury is empowered upon certain conditions to compromise any claims due to the United States.

Rev. Stat. U. S., Sec. 3469.

And very likely would be glad to do so but without relieving the companies of their public and quasi-public duties which were the supreme objects to be attained in their creation.

By still other laws, the Solicitor of the Treasury has charge of all lands or other property which may come into the possession of the United States for the payment of debts.

And when real estate becomes the property of the United States in payment of debt, and the debt is afterwards paid, the Solicitor of the Treasury may release said real estate to the debtor, which would probably apply to the payment of a compromise sum.

Rev. Stat. United States, Sections 3750-3751.

These provisions constitute a valuable right and interest to said Pacific Railroad Companies, which should not be taken away or impaired by foreclosure.

(118). Your petitioner begs leave to call the attention of the court to the fact that the period of the receivership herein has been the most depressing and disastrous to railroad enterprise and business of any that has been known, and that there is strong reason for believing that, with a return to normal times and business, said Union Pacific Railway Company, under careful management, can discharge all of its just obligations.

(119). Wherefore, for all and singular the foregoing, your petitioner submits that not a single interest in the premises appears whose just rights cannot be better served by a discharge of these procedings and a recommitment of the properties involved to said Union Pacific Railway Company under such prudent safeguards and supervision as this Court may see fit to impose, until the sinking fund aforesaid shall, if ever, be insufficient to meet said first mortgage bonds as they mature, or until the United States may take possession under its rights aforesaid, than by wrecking said company in any proceedings of sale in foreclosure; and that the design and effect of any such sale is and will be the sacrifice to a greater or less extent of every other interest involved, both public and private, for the inordinate benefit and enhancement in reorganization of certain selected securities held or controlled by a volunteer Reorganization Committee, formed, as your petitioner is informed and believes, to realize unmerited gains out of the loss and distress to be sustained and borne by the United States and the public and by private interests not taken care of in such contemplated proceedings.

PART FIFTH.

THE COMPLAINT.

(120). Your petitioner, relying upon its rights and interests and the rights, powers, and interests of the

United States and the Congress thereof and the powers and duties of the President and other officers of the United States and the rights and duties of the Union Pacific Railway Company, its constituents and predecessors in the premises, and showing that any foreclosure except by and in behalf of the United States, and that all foreclosure sales of said railroad would be in derogation thereof, repugnant thereto, and unauthorized, says and complains:—

(121). That said Union Pacific Railroad Company received subsidy bonds under the acts aforesaid to the amount of $27,236,512 in the par value thereof, and issued its first mortgage bonds to the amount in the par value thereof of $27,229,000, and purported to make a mortgage to secure the same to one Edwin D. Morgan and one Oakes Ames, as trustees, both of whom, since deceased, have been succeeded in said alleged trust by one F. Godron Dexter and one Oliver Ames, Second, and by which alleged mortgage said Union Pacific Railroad Company purports to have conveyed to said trustees, as your petitioner is informed and believes, all and singular its said railroad and telegraph line and all its real and personal estate, franchises, and property then owned or thereafter to be acquired by said railroad company, all on condition that for six months' default said trustees may take and operate said railroad on the request of a majority of the defaulted bonds and for one year's default may sell all of said mortgaged premises at auction on the request of a majority and for the payment of all said outstanding bonds regardless as to whether all shall have matured or not. But said mortgage does not purport to authorize any foreclosure by judicial proceeding against the United States or anybody else and does not purport to warrant any bar, but expressly preserves the right of redemption upon the payment at any time of the indebtedness thereby secured.

(122). And your petitioner says that the predecessors of said Kansas Pacific Railway Company received subsidy bonds under the acts aforesaid to the amount in the par value thereof of $6,303,000, and as your petitioner is informed and believes that one Henry M. Alexander and one John F. Dillon claim to be mortgage trustees under one mortgage, and said Dillon and one John A. Stewart claim to be mortgage trustees under another mortgage made by the predecessors of said Kansas Pacific Railway Company to secure an issue of alleged first mortgage bonds of said predecessors to the amount in the par value thereof of $6,303,000 and the above-named trustees claim, as your petitioner is informed and believes, that said alleged mortgages constitute liens upon the same property covered by, and that they are prior to, the lien of said $6,303,000 subsidy bonds aforesaid; that Russell Sage and George J. Gould claim to be trustees under another mortgage dated May 1st, 1879, which purports to be secured by certain lands and, among others, by substantially all the first mortgage bonds (not in sinking funds) on the Kansas Pacific road from the 394th mile post west by way of Denver to Cheyenne.

(123). That afterwards and after said Union Pacific Railway Company and the properties thereof had been put into the hands of receivers, as hereinbefore set forth, a certain association was formed under the name of the Reorganization Committee of the Union Pacific Railway Company, composed of Louis Fitzgerald (chairman), Jacob H. Schiff, and Chauncey M. Depew, all, as your petitioner is informed and believes, of the city, county and State of New York and citizens of said State, T. Jefferson Coolidge, Jr., and Oliver Ames, second, both, as your petitioner is informed and believes, of Boston, Massachusetts, and citizens of said Commonwealth, and Marvin Hughitt, a citizen, as your petitioner is informed and

believes, of the State of Illinois, and a resident of Chicago in said State.

(124). That the purpose of said Committee was to induce the holders, except the United States, of the various kinds of bonds, except the subsidy bonds, secured upon the main stem of the Union Pacific Railway Company, including the Kansas Pacific Line, "to combine," regardless of whether their respective holdings had matured or were in default or not, and especially so to induce "first mortgage bondholders" so "to combine for an enforcement of their prior lien."

(125). And to that end said Committee represented that the lien of the United States on the easterly end of the main line began at Omaha, and of the Kansas City line at Kansas City (exclusive of the Kansas City, Missouri terminals) that the United States had no lien on the Kansas City line west of the three hundred and ninety-fourth mile post, nor on the Leavenworth branch, so-called, nor on the Cheyenne division.

That eminent counsel had advised that the lien of the first mortgage bondholders might be effectively foreclosed, and that while it was desirable to make a settlement with the United States and to continue efforts in that direction, further delay on the part of the first mortgage bondholders in protecting themselves by securing their legal rights, would be likely to become dangerous and to result in loss.

That they, said Committee, "have been asked by large interests to formulate and proceed with a reorganization which shall at once secure to the holders of the first mortgage and other bonds requiring consideration in reorganization, a full return in new securities of the successor company with fixed charges based upon the lowest results from the operation of the main line and

the Kansas Pacific and Denver Pacific lines, which have been obtained during the times of the greatest depression."

(126). That said Committee had formulated a plan which it was believed "fully carries this purpose into effect."

That under said plan said Committee "proposed through such foreclosure proceedings as the Committee shall cause to be instituted or shall adopt, or through such other means as the Committee shall determine, that a new company shall succeed to (or that the present company reorganized upon the basis of indebtedness fixed in this plan shall retain) the main lines and lands covered by the mortgages included in the plan."

That under said plan the new Company shall issue the following securities:—

First Mortgage Railway and Land Grant,	
Fifty-year four per cent. Gold Bonds,	$100,000,000
Four per cent. preferred stock,	75,000,000
Common stock,	61,000,000
Total,	$236,000,000

(127). Your petitioner shows that the whole amount of bonded indebtedness, except that due to the United States, taken into account in the capitalization and bond issue proposed, amounts to only about fifty-five millions of dollars.

That if the entire indebtedness due to the United States, both principal and interest, and the entire capital stock, too, were also taken and added to the bonded indebtedness included as aforesaid, the whole amount of all thereof would fall some sixty millions short of the enormous issues of securities contemplated in said plan,

the greater part of which excess is, by said plan, allotted in bonuses to mortgage bondholders other than the United States to induce them to come into said plan, and to said Reorganization Committee and its associate syndicate, as hereinafter mentioned, as compensation for alleged anticipated services.

(128). That the whole provision which said plan purports to make for the payment of the lien indebtedness due to the United States, which, if reduced by the application thereto of the sinking fund, hereinbefore mentioned, would amount to about fifty-five millions, was thirty-five millions in said proposed first mortgage bonds and twenty millions in said preferred stock; and that by the agreement hereinafter set forth, said sum is reduced to a possible minimum of less than thirty millions in cash. Whereby, if bonds may be sold for money with which to pay the same, the whole amount of public and private bonded indebtedness taken into account by said Reorganization Committee need not exceed ninety millions.of dollars, and which embrace substantially all the value to be represented by said proposed issue of two hundred and thirty-six millions of stocks and bonds on said property.

(129). That, therefore, by said plan, a foundation will be laid for the contention that rates of fare charged for the service of said railroads, which Congress now has a right to reduce, when such rates exceed ten per centum of the cost of said road, may be imposed upon your petitioner desiring to connect with and upon the public generally using said roads, so as to yield a return to all these enormously watered, alleged representations of value; and all in derogation, as your petitioner is informed and

believes, of constitutional prohibitions of the State of Nebraska, in which the main stem of said line principally lies.

(130). That, further, to induce said first mortgage bondholders to come into said scheme, said Committee purported to enter into the following arrangement with a certain banking firm doing business under the firm name and style of Kuhn, Loeb & Co.:

"Through arrangements made with the Syndicate hereafter mentioned, the following cash provisions are made in respect to default and future interest on present first mortgage bonds of the Union Pacific and Kansas Pacific Railway Companies, as shown in detail below.

"First: The coupons now in default upon present first mortgage bonds are to be purchased in cash for account of the syndicate at the time of the deposit with the Committee of the bonds to which they pertain.

"Second: Coupons maturing on deposited first mortgage bonds in the interval between the deposit thereof under the plan and the date from which bonds of the new company are to bear interest (Jan. 1st, 1897) are to be purchased by the syndicate from the Committee, which, in turn, shall apply the amounts so received at the respective due dates of the coupons to the payment of corresponding installments on its outstanding certificates applicable to such deposited bonds. * * * The proportion of the current semi-annual interest installments which shall have accrued on January 1st, 1897, on such of said bonds as do not bear January coupons, shall be likewise provided for in cash at the time of the delivery of the new bonds."

That—

"During the pendency of the plan and when it shall be declared operative, the depositor, under the Reorganization Agreement, of a $1,000 bond of either of the following classes:

Union Pacific,
Kansas Pacific, Eastern Division,
Kansas Pacific, Middle Division,
Kansas Pacific, Denver Extension,
} First Sixes,

will receive:—

"1st. Cash for all defaulted coupons on the date of deposit.

"2d. A certificate entitling the holder to compound interest upon the same when allowed by the Court.

"3d. Cash for all maturing coupons on the respective dates of their maturity to the date from which the new bonds will commence to draw interest.

"4th. Six per cent. to January 1, 1897, on bonds maturing in 1895 and 1896, payable semi-annually.

"5th. Cash for the rate difference of 2 per cent. between the old and the new bonds, on bonds maturing subsequently to January 1, 1897, from January 1, 1897, to the date of maturity of the old bond.

"6th. $1,000 in a new 50-year first mortgage gold bond bearing 4 per cent. interest from January 1, 1897.

"7th. $500 face value in preferred shares of the new corporation.

* * * * * * * * * *

"Upon any just and conservative valuation which may be placed upon the new first mortgage bonds and the new Preferred Stock offered in exchange for the principal of the present first mortgage bonds, these new securities will be found to merit such market price as to make the exchange clearly desirable from the standpoint of realization value."

(131) On the other hand, and to enable said Reorganization Committee to acquire power and control over said Union Pacific Railway Company in aid of its purposes aforesaid, the stockholders therein were induced to surrender their stock to said Committee and to pay an assessment of fifteen dollars per share on their stock to aid said Committee in its purposes by representation as follows:

"The common stock of the present company will be assessed $15 per share Shareholders paying the assessment of $15 will receive the amount of the assessment (viz., $15 per share) in new preferred stock at par, and will also receive par of their present common stock in common stock of the new company.

"Shareholders who do not pay their assessments as called will forfeit their rights. The stock assessment will be underwritten before the plan is declared operative.

"The proceeds of the assessment will be applicable to the cash requirements of this plan as herein provided, and to such requirements as shall be fixed and determined by the Committee, including such expenses and charges as it shall make or incur in the premises; and suitable compensation to the members of the Committee."

(132) Both bondholders and stockholders were required to act on the respective inducements held out to each promptly on the representation that—

"The time for the deposit of bonds receivable under this plan and of the shares of stock of the present company is limited to December 31st, 1895, after which no bonds will be admitted except upon the payment of a penalty of five per cent.

"The Committee moreover may at any time decline to receive further deposits of securities, and should, under any settlement with the United States Government, a foreclosure under the first mortgage alone become requisite, first mortgage bondholders who have not deposited may suffer material detriment and forfeit important advantages. * * *

"Upon shares of stock deposited after the time above limited (December 31, 1895), the assessment will be at the rate of $20 per share. After the expiration of the limit of time, the penalty of $5 per share will be payable at the time of the deposit and will not be refunded."

And that—

"Holders of securities not deposited in the manner herein provided within the time so fixed, limited, extended or renewed, will not be entitled

to deposit the same or become parties to this agreement or share in the benefits thereof, and shall acquire no rights thereunder except by express consent of the Committee, and on such terms and conditions as the Committee may prescribe."

(133) And in respect of said reorganization syndicate, said Committee represented to said security holders:

"A Reorganization Syndicate has been organized under the management of Messrs. Kuhn, Loeb & Company, bankers, to furnish the sum of ten million dollars for the following purpose:

"1. To purchase all the interest coupons on first mortgage bonds now in default.

"2. To purchase, as they shall mature hereafter, the interest coupons on first mortgage and also the semi-annual assignments of interest accruing on bonds already matured during the pendency of the plan and until it shall become operative.

"3. To purchase, if it shall be found advisable for the promotion of the reorganization, any outstanding first mortgage bonds and Omaha Bridge bonds, and to deposit the same under this plan, and if it shall be found advisable to purchase all or any defaulted or future maturing coupons or interest assignments on Omaha Bridge bonds.

* * * * * * *

"Such steps shall be taken in respect of all purchased coupons and interest assignments as will secure a valid claim for cumulative interest in favor of the Reorganization Syndicate.

"The right is reserved in behalf of the Committee, with the assent of the bankers, to call for an increase of the amount required to be advanced by the Syndicate to fifteen million dollars.

"The Syndicate is to advance a sum not exceeding $100,000 for expenses, repayable with interest at six per cent. interest after the plan shall have been declared operative. All advances made by the Syndicate shall be repayable in gold.

"Six million dollars of preferred stock are to be turned over as compensation to the syndicate, of which the bankers are to retain one million as their own compensation."

(134). Your petitioner says that the plan of said Reorganization Committee, as aforesaid, was printed and was widely advertised, to the end that it might come to the notice of security holders; and that, annexed to the plan, was a draft of an agreement which all depositors of securities were to sign, which provided that said Reorganization Committee should have such transfer assignments and powers of attorney as should enable said Committee to vest the title in all such securities in themselves.

Your petitioner craves leave to refer to said plan and agreement at the hearing.

(135). And your petitioner, upon information and belief, says that nearly all of the bonds of the kinds embraced in said plan of reorganization, and nearly all of the stock of said Union Pacific Railway Company, have been deposited subject to the control of said Committee, as required by said plan.

And your petitioner, on allegation of information and belief, submits that the purpose of said plan and agreement is manifestly, upon the face thereof, to wreck and destroy said Union Pacific Railway Company, together with all the stock interests therein and many of the junior securities thereof, also all ability on the part of said company to fulfill the purposes for which it was created and aided by the United States, or to perform its duties to the United States and the public and localities and to your petitioner and other interests, as hereinbefore set forth, and all value in and sources of payment for any balance of its indebtedness to the United States, and all unsecured indebtedness, and so that another company which said Reorganization Committee may form or cause to be formed shall succeed to all its properties, including its said railroad and telegraph lines freed from the obligations and servitudes which pertain to said existing company and the properties thereof, as hereinbefore set forth.

(136). And in like manner submits that said plan and agreement are usurious and champertous and disclose a purpose of maintenance, especially in behalf of said first mortgage bondholders.

All to be accomplished by confederacy between said Committee and the members thereof and said Syndicate, wherein is also expressly disclosed a purpose to achieve important advantages for the security-holders who come in under their

plan, whereby and in comparison with which other holders of like securities will suffer material detriment.

(137). And your petitioner, on allegation in like manner of information and belief, submits that said plan and agreement, taken in connection with the action of said Reorganization Committee under and in pursuance thereof, also constitute a confederacy or conspiracy offensive to the United States and the people thereof, and in derogation of and detrimental to their power and interests.

(138). Thus your petitioner, on information and belief, alleges that said Reorganization Committee assembled said bonds and stocks under advice, belief or pretence and representation that it would thereby acquire rights and powers against the United States, which, in the absence of any compromise with the United States, it would exercise all as follows:

That the lien of the first mortgage bonds covered other property, railroad, terminal, bridge and equipment not included in the subsidy lien of the Government. That the first mortgage bondholders might foreclose the Government out of its interests in the property, just as they might foreclose individuals. That the Government is in the position of any other creditor. That notice could be given to the United States, and, if they failed to resort to their right of redemption, the legal effect would be an estoppel. That the Reorganization Committee would have all the power they needed to foreclose, and that no legislation on that point was necessary. That such proceedings should result in foreclosure sale at which the Reorganization Committee would probably be the purchasers, or a committee designated by it as purchasing trustee.

That in such sale the franchise of the company would be sold, and the right of the United States to keep and maintain

directors in that corporation would be extinquished, as well as any obligation of that character. And that the right of the United States to the transportation of its soldiers, munitions of war, and mails would become a common law obligation of the road after it had gone into private hands, like the right of the United States with reference to any road; and that a syndicate of aliens could, under the general rule, become the purchaser of the property including its franchises.

(139). In this connection, and in connection with the fact that the Reorganization Committee contemplated becoming the purchasers for the benefit of the depositors of the securities, your petitioner calls attention to the fact that three of the five depositories of securities are established in, and three of the five places in which publication is to be made of notices required under the plan are, London, Amsterdam, and Frankfort-on-Main.

(140). Your petitioner further, on information and belief, says that said Reorganization Committee itself was of opinion that there was absolutely no occasion for foreclosure, except as against the United States, and if that matter could be settled; yet, being advised that the right way to bring a suit for the securities they represented was in the name of the trustee of the mortgage, such suits were brought before said Reorganization Committee sought any legislation from Congress, and are now pending, for the effective sale of the property free from all equities or redemption in the United States named therein, and a monition was served upon the Government notifying it of the pendency of the proceedings.

(141). Afterwards, as your petitioner is informed and believes, said Reorganization Committee addressed a statement to the Chairman of the Committee of the Senate of the United States on Pacific Railroads, expressing that the

Committee's view was that the Government could be foreclosed and that no outstanding right of redemption would be left open, but that the Committee would consider it better to agree with the Government on some just and equitable solution of the matter. And thereupon said Reorganization Committee appeared, by its representatives, before the Committees on Pacific Railroads for the Senate and the House of Representatives of the United States.

(142). And said Committees of the Senate and House formulated and reported to both said branches of Congress a proposed act, called the Funding Bill, for the release by the United States of its interests in said railroad, in accordance with proposition and terms proposed to said Congressional Committees by said Reorganization Committee, which bills were strenuously opposed by your petitioner because they made no substantial provision for the protection and preservation of the public and private rights and privileges in the premises, in which your petitioner is interested as aforesaid (except for a preferential use of said railroad for reasonable compensation by the Government), and because the Reorganization Committee's representatives opposed an amendment to said bill, which should protect your petitioner's said rights and interests.

(143). And said bill and the propositions thereof were, by a very large majority of the vote, utterly defeated and rejected in the House of Representatives on the eleventh day of January last past, and a motion to recommit was held under advisement by the Speaker of the House until the twelfth; and a few days thereafterwards a bill for the adjustment of the Government's interests in said railroads was introduced into the Senate by the Senate Committee on Pacific Railroads, and a like bill was shortly afterwards reported to the House by the Committee thereof; which bill,

as reported to the Senate, is there pending and is the first on its calendar, the passage whereof for the purpose, among others, of avoiding any threatened foreclosure proceedings in the premises, was urged by said Senate Committee in a report made to the Senate on the eighth of the present month, to which report your petitioner asks leave to refer.

(144). In the meantime and after the alleged or attempted services of notice or monition upon the United States in said prior foreclosure suits brought in behalf of the first mortgage bondholders, the Attorney-General steadfastly kept the Government out of said suit, though his special assistant in the matter had a good deal of conference with counsel for the Reorganization Committee, and the Attorney-General was advised of their contentions and that an attempt would be made to enforce the Government's appearance in the foreclosure suits with a view of giving a complete title to the purchaser in the foreclosure sale.

(145). That also, in the meantime, the Reorganization Committee, through counsel, urged upon the Attorney-General that the Government could be made party to a suit in which said Committee would oust the rights and interests of the United States if it failed to acquire them under the Funding Bill, until the Attorney-General, who, while believing that the appearance of the Government could not be compelled, was nevertheless pursuaded that in the threatened foreclosures a difficult problem was presented by the Government's ownership of a subordinate security upon property whose value he thought was generally believed to be insufficient to pay in full any but said first mortgage; and thought that, unless the Funding Bill was passed, the Government should endeavor to secure terms for its appearance in court in the way of an assurance of such a bid on the property, in

case of a judicial sale, as would secure it a fair realization of the value of its lien.

(146). That immediately upon the defeat of said Funding Bill, and in the midst of the activity of Congress aforesaid in the matter, the Attorney-General, in pursuance of his opinions outlined as aforesaid, was induced ostensibly to invite overtures from said Reorganization Committee to subject the interests of the United States in the premises to a judicial auction sale, and purported to enter into an agreement with said Reorganization Committee whereby, in consideration of a promised bid of less than forty-six million dollars to be made by or in behalf of said Committee, he agreed that the Government "shall at once take proceedings in the pending foreclosure suit," meaning the suit wherein foreclosure is sought of the lien of the first mortgage bonds, which, it is alleged, underlies the lien of the United States in the premises, "or by independent bills for the foreclosure of its" (the Government's) "lien upon the railroad and property of the Union Pacific Railway (which includes the Kansas Pacific line) by sale thereof, and for the sale of the sinking fund in the hands of the Secretary of the Treasury relating to the Union Pacific Railway Company. * * * * The sale of the sinking fund to be judicial or otherwise."

Said alleged agreement purports to be in the form of a correspondence, copy whereof, with a statement in respect of the same, the Attorney General furnished to the Senate in a communication addressed to the President of the Senate in response to a resolution of inquiry, a copy of which communication is hereto annexed and made a part hereof.

(147). And that in pursuance of the agreement and arrangement aforesaid, and to carry out the same, the Attorney-General filed his said original bill in behalf of the United States in the first of the above entitled causes, and

purported to enter or to cause to be entered an appearance and answer in behalf of the United States in the prior foreclosure suits aforesaid, being the second of the above entitled causes, with the intention that contemporaneous foreclosure sales should be made in both said proceedings. And your petitioner begs leave to refer to both of said bills, the pleadings therein, and records thereof, here on file for the purpose among others of showing that both contemplate a sale of said Union Pacific Railway and all statutory rights and claims of the United States, and the franchises embraced in the premises free and discharged of all claims of the United States or of said defendant Union Pacific Railway Company, and without regard to or any protection of the rights of the public or any member thereof in the premises.

(148) All and singular the foregoing acts of the Attorney-General were, as your petitioner is informed and believes, done at the request and in pursuance of the purposes of the combinations of interests effected by and in furtherance of the understanding, purpose, and interest of said Reorganization Committee and the members thereof and said Kuhn, Loeb & Company, and their associates, as hereinbefore mentioned and otherwise.

(149) And your petitioner submits, on information and belief, that the taking of its railroad from said Union Pacific Railway Company and the vesting thereof in a new corporation in the manner and with the effect contemplated by said Reorganization Committee would and are designed to impair or destroy the rights, powers, and interests of the United States and the public now secured as aforesaid, as not applicable to said new corporation, as follows:

To preserve the right of your petitioner and others in like situation to build railroads to connect with said Union Pacific Railroad at such places and on such just and equit-

able terms as the President of the United States may prescribe.

To require said Union Pacific Railway Co. to have and retain the roads and equipment essential to the performance of its duties, both to the United States and every part thereof and to the people, and to operate said road as now required by law and subject to existing rights of Congress to reduce the rates of fare thereon.

To have said road subjected to all the servitudes imposed upon it for the benefit of the Government or the public, especially including herein subjection to an effective exercise of the statutory rights and powers now secured to the United States and to the people, as hereinbefore set forth.

To add to, alter, amend, and repeal the Act of July 1st, 1862, aforesaid, "the better to accomplish the objects" of the said Act, "namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but especially in time of war) the use and benefit of the same for postal, military and other purposes."

To enact special legislation in behalf of the United States' own interests in respect of said road, as the United States may now do, both of sovereign right and under said Act of 1862.

To prevent, especially in time of war, any alien or hostile interests from acquiring, operating, or destroying said road as the private property of such interests.

To require that said road and the branches thereof, and the Central Pacific Railroad in connection therewith, be kept in repair and in working order, and to take the income of all said roads to repair any part of either.

To have supervision over and knowledge of and a voice and vote to determine the purpose of the directorate of said Company, by representation of the Government on said Board.

To require reports concerning said road to be made to the Commissioner of Railroads of the United States or to any other officer or bureau of the Government.

To have the books, records, correspondence, and all other documents of said Company open at all times to the inspection of the Secretary of the Treasury or such persons as he may designate.

To secure that "the whole line of said railroad and branches" (including the Central, Union and Kansas Pacific Roads), "shall be operated and used for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one connected, continuous line."

And other reciprocal obligations imposed upon said bond-aided railroads by Section Fifteen of the Act of July 2, 1864. Any refusal to comply with which requirement now constitutes, as provided in the Act of June 20th, 1874, a penal offense against the United States, punishable by imprisonment and also by punitive damages to any of the public aggrieved by such refusal.

To prevent the payment of any dividends to the stockholders of said Company except out of net earnings, which to do was forbidden generally by the Act of March 3d, 1873, and which payments, if made, when the requirements of the Thurman Act are not complied with, are in the sixth section of said Act made a penal offense against the United States, punishable by imprisonment.

To prevent the creating of any mortgage or pledge upon the property or earnings of said Company, without leave of Congress, except for the purpose of funding and securing

debt existing on March 3d, 1873, or renewals, which to do is now, as provided in the Act of Congress of said date, a penal offense against the United States.

To have the rates of fare on said railroad reduced by Congress, if unreasonable, when they exceed ten per centum of the cost of said road.

To secure a right of other railroads to connect with said Union Pacific Railroad on such just and equitable terms and at such places as the President may prescribe.

And other like rights and immunities for the benefit of the United States, the various sections thereof, and the public and private interests affected or involved.

(150). And your petitioner says that counsel of said Reorganization Committee is also of counsel in the foreclosure proceedings of the second of the above entitled suits, and of Russell Sage and George J. Gould in their proceedings to foreclose the consolidated mortgage aforesaid, and that the co-operation of interests to effect a foreclosure against the United States was so apparent in the examination of one of the Receivers before the United States Senate Committee, that a senator conducting said examination (Senator Brice) declared:

"It is apparent from what examination has been had, that on the threshold of this whole matter there is a cloud on the action of the Receivers, and of the Trustees, and Counsel, and on the whole fabric. It is true (and I think you should explain to the Committee) that there is practically but one mind in charge of all the various phases of the case, and that the divisions and partitions between them are merely technical—I mean between the Mortgage Trustees and the Counsel."

(151). And your petitioner, upon information and belief as to the construction to be put upon the acts and doings of the Reorganization Committee and the organization thereof and of its associates and beneficiaries, submits that they constitute and effect a combination, both unlawful in itself since, among other reasons, it is champertous and

embraces maintenance as above submitted, and unlawful in its purposes since they offend against the United States as aforesaid.

(152). Your petitioner, on information and belief, says that said Reorganization Committee make various pretenses in the premises, as follows:

That it has a lawful and enforcible contract with and against the United States by virtue of its correspondence with the Attorney-General aforesaid, and the deposit made by it, or, if not, then that it should not itself be bound and may withdraw said deposit for want of consideration.

That under the provisions of the Act of March 3rd, 1887, aforesaid, and under the direction of the President, the Attorney-General had authority to enter into said agreement and can carry it out.

That said agreement is necessary and in time pressing for the relief and payment of first mortgage bondholders.

That otherwise and by virtue of his office, the Attorney-General could enter into said agreement and carry out the same in the lawful exercise of his official duties.

That his authority includes the power to sell the sinking fund in the hands of the Treasurer of the United States.

That said agreement does not usurp functions more appropriately pertaining to the Secretary of the Treasury or to Congress.

That said agreement is in its provisions wise, fair, and equitable for and not unconscionable toward the United States.

That your petitioner and others of like interests and the public have no standing herein to oppose.

That the Court can do full justice and equity to all interests concerned.

(153). But your petitioner, on information and belief, charges to the contrary of all and singular the foregoing

pretenses as hereinbefore set forth, and further, on information and belief, says that the truth and fact thereof are as follows:

That said alleged agreement between the Attorney-General and said Reorganization Committee is not a lawful and enforcible contract against any or either party, and neither that nor said alleged deposit of $4,500,000 therein mentioned afford any security to the United States that said agreement would be observed or performed before this or any other Court having jurisdiction, or otherwise or elsewhere, none of said Committee being a party to any of said suits, nor are they or any of them or said deposit within or subject to the jurisdiction of this Court.

(154). The Act of March 3rd, 1887, by the true construction thereof, as hereinbefore shown, contemplates the acquisition by the United States and subrogation to and foreclosure of any forcloseable mortgages which the United States had expressly authorized to be placed upon parts of said property; also foreclosure of the lien declared to the United States in the Thurman Act so far as any such lien was necessary to cover property not derived from and which, therefore, on forfeiture, would not revert to the United States.

Beyond this, it is submitted the Act would become obsolete as a remedy in behalf of the United States and superseded by the operation of the forfeiture acts in six months after any default.

Further than this, it is apparent that the Act affords no justification to the Attorney-General for his action or the direction of the President thereto, since the Act is, by its terms, to be invoked only when, in the opinion of the President, it shall be necessary to avail of it for the protection of the security and interests of the United States as against prior liens lawfully liable to be enforced, in which event it is the duty of the President to direct the payment of such prior liens.

(155). It is not pretended or averred that the President entertained any such opinion of necessity, or that any such necessity did, in fact, exist, but to the contrary thereof the Attorney-General's bills show that it did not exist for they declare that the Attorney-General had not entered the appearance of the United States in the prior foreclosure suits, and his published report shows that his refusal so to do was, in his opinion, a perfect protection to the United States as against such suit.

(156) It is further submitted there are no foreclosure statutes or common law of the United States to regulate the matter, and in the absence of such the only foreclosure contemplated in said Act when operative is strict foreclosure and not foreclosure sale.

That this is especially true when, as in this case, the defendant is not in possession and if in default its titles and franchises have reverted to and vested in the United States for breach of condition and forfeiture. The Government cannot foreclose against itself and there is nobody else to respond.

Your petitioner has hereinbefore shown that said agreement was not necessary for the relief of the first mortgage bondholders while the sinking fund on which they constitute a first charge is larger than the amount of such bonds that have matured, and that it is good equity that they exhaust that special security before ousting or competing with other or junior creditors for participation in a common security or general asset of an insolvent.

That the Attorney-General had no authority to make the agreement by virtue of his office or in the exerise of any duties imposed upon him as a law officer of the Government. On its face it is apparent that the transaction was not of such intendment as may be relegated to the Department of Justice, but was in substance and truth a bargain

or compromise to the support of which the exercise of the Attorney-General's official functions in conducting litigation is subordinate and perfunctory.

That especially he could not agree to any sale or disposition of the sinking fund which by emphatic decision of the Supreme Court belongs to the Union Pacific Railway Company (99 U. S., 700), and the United States holds it subject to a prior lien and trust in behalf of first mortgage bondholders.

(157). The agreement, it is submitted, is a usurpation by the Executive Department of the functions of Congress, which tribunal was dealing with the matter when the foreclosure bills were filed, which bills, it is submitted, must either take the matter out of the hands of Congress or be stayed or dismissed.

Your petitioner submits that if Congress has the right to legislate in the premises, neither the Executive nor Judicial Departments of the Government can terminate the right without the consent of Congress. To show the pending action of Congress in conflict with the pending proceedings herein, as well as to support many of your petitioner's claims herein, and to show the unwisdom of any foreclosure sale in any of the above entitled actions, your petitioner begs leave to again refer to a report recently (April 8th, 1897) made to the Senate of the United States by the Committee thereof on Pacific Railroads.

While the refunding bill aforesaid was properly before Congress and was under debate, your petitioner procured a proposed amendment thereto to be presented and read, designed to protect certain of the rights and interests of your petitioner in the premises, as hereinbefore set forth, which amendment said Reorganization Committee, by representatives of the interests thereof, opposed, and said Committee of the House, having said proposed act in charge, rejected said amendment, which rejection, as your petitioner is in-

formed and believes, largely contributed to the defeat of said bill; and your petitioner says that said bill was, in the main, supported by the representatives of States whose people were financially interested, and was, for the most part, opposed and defeated by the votes of representatives of States whose people were largely dependent upon the operations and connections of said road and the service to the public to be thereby secured; and that, immediately following said defeat, other bills were in preparation and to be introduced more in accordance with the seeming views and purposes of the majority than the defeated bill had been, when the foreclosure proceedings herein were instituted by the Attorney-General. And your petitioner shows that these and other like differences between the private interests involved seeking a compromise, and the public interests to be affected by the disposition of the railroads aforesaid, can be more appropriately contested and determined in Congress, where all the people are represented, than by the courts.

(158). The agreement and arrangement is unwise for and unconscionable toward the United States.

Your petitioner shows that the amount of cash required for completing the purchase at such sale is so enormous that preparation to meet the same by more than one or two parties practically forbids competition, and that such improvident forced sale would presumably discharge all persons collaterally or remotely liable for the payment of said indebtedness to the United States, or liable to contribute to any fund which should be available therefor, especially including stockholders in said Union Pacific Railway Company, its constituents and predecessors to pay up unpaid subscriptions to the stock of said companies.

Such sale would subject to the risk of a cash bid of forty-six millions all the security the Government has for a claim of about seventy millions, thus imposing a probable loss of about twenty-five millions on this property alone, and a

possibility of large liability to first mortgage bondholders for selling the sinking fund on which such first mortgage bondholders assert a first lien, and especially that such sale would seemingly be inevitably ruinous of the value of a similar lien of the United States for about sixty millions now maturing upon the Central Pacific Railroad, for which road, in the event of the sale herein contemplated, there would be no connection or outlet to the East in or over which the United States would have any interest or control.

In the report of the Senate Committee on April 8th, 1897, it is said:

"It is confidently believed by the committee that a result can be reached through and by means of a commission which will be much more advantageous to the interests of the United States than could be reasonably anticipated by, or as the result of, a suit for the foreclosure of the Government's lien, which, as has been stated, would undoubtedly necessitate the foreclosure of the paramount lien securing the first-mortgage bonds."

In the report of the majority of the House Committee of February 11, 1897, it is said as follows:

"Again, it is thought by many, and strong grounds to sustain it that a better price can be obtained for the Union Pacific and Central Pacific railroads, if sold jointly, than can be if sold separately. It would be prudent at least to make a test of this, which can only be done by having some proper tribunal to represent the Government."

And in the report of the minority of that Committee:

"Besides, there are more lawsuits than property to be sold, and until these can be determined, nobody would dare to bid save this reorganization committee that controls the junior and contesting interests."

"But the great loss will fall on the sale of a similar lien which the Government has for about sixty millions on the Central Pacific. The Union Pacific is the only eastern connection of the Central Pacific, in or over which the Government has any interest or control, and when that is gone, the Government's second mortgage on a road running from San Jose to 5 miles west of Ogden would be of but little, if any, value. Everybody now understands this, and the most eminent experts in the country say it would not be merely a blunder but a crime to sell the two roads separately."

And we beg leave to refer to perhaps as good expert testimony as can be found in the country, in our quotation from the statements of Stuyvesant Fish before the House Committee as hereinbefore stated.

The agreement fixes the price first, and the Attorney General's bill provides for finding out what is to be sold afterwards. There are the widest possible differences of

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opinion among lawyers and others of special and expert knowledge in the premises as to the nature and extent of the Government's liens aforesaid, and what, if any, are the underlying liens, or what they cover; and equally wide differences as to what the assets of the Union Pacific Railway Company are, and what of them are subject to the Government liens or available to the payment of the indebtedness so secured. These differences, none of which have been judicially ascertained, measured in money, amount to very many millions of dollars, among which is the question as to whether the Government's lien covers the Omaha and Council Bluffs terminals and the bridge between the same, which has been a subject of constant debate in Congress, the doubt and gravity of which have been stated to Congress by the receivers of said property, and which question is generally thought to involve an interest of the value of ten million of dollars; also a question as to whether the income of the Union Pacific Railway Company invested in new and branch lines while that Company has been, by anticipation and as shown in the Thurman Act insolvent, can be followed, which question is estimated to involve between twenty and thirty millions; also the question as to whether the lien declared in the ninth section of the Thurman Act is constitutional, which is pertinent to determine whether the Government's lien covers land and securities in one trust to the nominal value of more than ten millions, and in another trust of nearly one hundred millions, and other large properties, and if so, what the order or priority of such liens may be.

That there is a further question as to whether the roads can be sold free from the servitudes imposed upon the same by existing laws in behalf of the Government and public, including the conflicting contentions as to the right of the Government to retain in priority of the interests of any first mortgages all compensation for services to the Government, until the indebtedness for the aid to said roads furnished by the Government shall be fully paid, which compensation

now amounts to about fifteen hundred thousand dollars per year, and could be indefinitely perpetuated to that extent and retained by the Government, if the road should be sold so as to leave a deficit in the indebtedness to the amount contemplated in the guaranteed bid aforesaid. That other complications and great, like and unlike, uncertainties as to what constitutes the securities to the Government and its interest therein exist and concerning which a former Attorney-General, Mr. Olney, filed a paper in the first of the above-entitled suits, to which your petitioner craves leave to refer; all of which matters, it is submitted, should be ascertained and determined before there should be any offers of sale whatsoever.

(159) As to the two remaining pretences, your petitioner submits that if it is not entitled to standing herein, as is said in one of said pretences, then the Court does not have all parties in interest before it so as to do full justice as is said in the other.

Wherefore and forasmuch as your petitioner is without other relief in the premises:—

To the end that your petitioner's right to build a railroad to and to connect with the railroad of said Union Pacific Railway at such point and on such just and equitable terms as may be by law prescribed;

And that said terms may include in behalf of Sioux City and the Middle Northwest a reciprocal exchange of business and co-operation with the road and branches of said Union Pacific Railway, without adverse discrimination against the road of your petitioner or in behalf of said road of the Union Pacific Railway Company or any other branches or connections thereof; and that the rates of fare on said Union Pacific Railway Company may continue to be within the control of Congress and subject to reduction when unreasonable; and that such railroad, together with its branches and connections,

may be operated as a connected continuous line; and that in the first of the above-entitled cases the remedies of the United States, against the properties of said Union Pacific Railway Company for default, may be confined to forfeiture and reverter of all rights, privileges, franchises, and grants derived from the United States, and strict foreclosure of all liens of the United States upon all and any other properties of said Company;

And that there may be no enforcement of the indebtedness due from said Company to the United States in any foreclosure proceedings which shall impair the rights of your petitioner as aforesaid, and other public and quasi-public obligations of said Union Pacific Railway Company; and that in the second of the above-entitled causes there may be no foreclosure or foreclosure sale which shall impair the rights of your petitioner as aforesaid, but that the holders of said first mortgage bonds which have matured shall be required first to exhaust their remedies against the sinking fund held by the United States before resorting to foreclosure, while said Company is not in default except by the neglect of the United States to apply said fund as aforesaid to the payment of said bonds as they mature; and that in both the above-entitled suits the receivers may be directed to enforce the liabilities of certain of the stockholders for unpaid subscriptions, to the end that the creditors of said Company may be paid with the proceeds thereof;

And that in the third and all the above-entitled suits said defendant Union Pacific Railway Company may be required to defend and maintain its rights and immunities in the premises so that it may perform its duties and observe its obligations to the United States and the public, especially to your petitioner, as hereinbefore set forth; and that upon its failure or neglect to do so your petitioner may be admitted so to defend in the name and behalf of said Company;

And that the members of said Reorganization Committee of the Union Pacific Railway, hereinafter named, may be made parties defendant to this petition in each of the above-entitled causes, and that the first of said causes may be held to have been unauthorized, and dismissed, and the second premature and misconceived as to the remedy prayed for, and that the complainants in the first of said causes and the members of said Reorganization Committee and said defendant Union Pacific Railway may be required to answer this petition, but not under oath, and that they and each of them and their officers and agents may be enjoined and restrained from further prosecuting or participating in or promoting any foreclosure sale of the railroad or other property of said Union Pacific Railway Company or reorganization of said Company, and that no such sale may be had; and

In the alternative, but protesting against any such sale, that suitable provision may be made, in the decrees and orders therefor in all said cases, to preserve the right of your petitioner to build its railroad to and to connect the same with the road of said Union Pacific Railway Company at such place and on such just and equitable terms as may be therein prescribed, which shall include a right to connect therewith as a part thereof and to a fair reciprocal exchange of freight and traffic and co-operation with the road and branches of said Union Pacific Railway Company so as to form a part with it and its connection, the Central Pacific Railroad, of a continuous connected line from Sioux City aforesaid to the Pacific Ocean, all without adverse discrimination of any kind against the road of your petitioner or in behalf of said road of the Union Pacific Railway Company, or any other branch or connection thereof;

And that, should any judicial sale be found to be authorized and necessary in the premises, a master may be appointed to formulate and report to the Court a plan

for the same, which shall be protective of all interests concerned, especially those of your petitioner as hereinbefore set forth, and on terms which shall bring the purchase of the property to be sold reasonably within the means and resources of competitive and more than one or a few bidders;

And that your petitioner may be admitted a party hereto for the protection of its own rights and interests, as well as those of others in like situation with itself, who may choose to come in and be made parties hereto, and those of the public, as all or any of said rights or interests arise out of or rest upon any duties or servitudes undertaken or imposed upon said Union Pacific Railway Company, its constituents and predecessors, and its and their railroads and the operations thereof not due strictly to the Government as such and to make suggestion of all such duties and servitudes, due to the Government and the public, in which your petitioner and those in like situation with itself and the public have any interest;

And that your petitioner may have such other and further relief as the nature of the case may require and to your Honors may seem meet;

May it please your Honors to admit your petitioner as a party in each of the above-entitled causes, with full standing, to protect and defend all and singular the rights and interests herein asserted by your petitioner, and the rights or duties of others not otherwise protected or defended in said causes, on which the interests of your petitioner depend, with right to notice and to be heard on all matters touching the same, and to appeal and review, and to all other remedies and reliefs necessary, proper, or convenient in the premises, and that an order may be issued to be addressed to said Reorganization Committee and the members thereof, to-wit: Said Louis Fitzgerald, Jacob H. Shiff, and Chauncey M. Depew, all of the city, county and State of New York, and

T. Jefferson Coolidge, Jr. and Oliver Ames, 2nd, both of Boston, in the Commonwealth of Massachusetts, and Marvin Hughitt, of Chicago, in the State of Illinois, restraining them from further pursuing or seeking to pursue or enforce said alleged agreement between said Committee and the Attorney-General of the United States, to-wit, the agreement expressed in the communication hereto annexed; and a subpoena requiring said Committee and the members thereof aforesaid and said defendant the Union Pacific Railway Company to appear and answer all and singular the premises, in each of said suits, but not under oath, the benefit of answer under oath being hereby waived, and an order that all other parties to any of the above-entitled causes wherein this intervention is sought who may have or assert any interest in the matters of this petition to-wit:

Russell Sage and George J. Gould, both of No. 71 Broadway in the City of New York, as Trustees under a certain alleged mortgage known as the Consolidated Mortgage of the Kansas Pacific Railway Company, and also as Trustees under an alleged first mortgage upon the Cheyenne Branch, so-called, of the Union Pacific Railway Company, who appear by their Solicitor (among others), Winslow S. Pierce, of No. 195 Broadway in said City of New York.

John F. Dillon, of No. 195 Broadway, and Henry M. Alexander, of No. 120 Broadway, both in said City of New York, as Trustees under an alleged first mortgage of the Eastern Division of the Kansas Pacific Railway Company, and who appear by their Solicitor, Charles C. Deming, of No. 120 Broadway of said City of New York.

John A. Stewart, of No. 45 Wall Street, and the said John F. Dillon, of No. 195 Broadway, both in the City of New York, Trustees under an alleged first mortgage on the Middle Division, so-called, of the Kansas Pacific Railway Company, who appear by their Solicitor, Ed-

ward W. Sheldon, of No. 45 Wall Street, in said City of New York.

The said John A. Stewart, whose address is as aforesaid, and William Endicott, Jr., the latter, as your petitioner is informed, of Boston in the Commonwealth of Massachusetts, as Trustees under an alleged first mortgage of the Denver Extension, so-called, of the Kansas Pacific Railway Company, who appear by their Solicitor, the said Edward W. Sheldon, whose address is as aforesaid.

The Mercantile Trust Company, of No. 120 Broadway in said City of New York, Trustee under an alleged mortgage called the Kansas Division and Collateral Mortgage of the Union Pacific Railway Company, asserting, among other things, a first lien on the equipment of said Company, which appears by its Solicitors, Alexander & Green, and W. W. Green, all of No. 120 Broadway of said City of New York.

The Union Trust Company as Trustee under an alleged first mortgage upon the lands of said Union Pacific Railroad Company, which appears by its Solicitor, Wheeler H. Peckham, all of No. 80 Broadway, in said City of New York.

J. Pierpont Morgan, of said New York City, at the corner of Wall and Broad Streets therein, and Edward F. Atkins, of said Boston, as your petitioner is informed and believes, as Trustees under an alleged first mortgage on the Omaha Bridge, who appear by their Solicitors, Seward, Guthrie, Morawetz & Steele, of No. 31 Nassua Street, in the City of New York, and also by Wharton & Baird, of Omaha, in the State of Nebraska, in the New York Life Building therein.

The Central Trust Company, as Trustee under an alleged renewal mortgage, so-called, on said Omaha Bridge, which appears by its Solicitors, Butler, Stillman & Hubbard, and Adrian H. Joline, all of No. 54 Wall Street in said City of New York.

The Receivers of said Union Pacific Railway Company, a citizen and resident of the State of Missouri; S. H. H. Clark, of St. Louis, in the State of Missouri; Oliver W. Mink, of the Ames Building, in Boston, in the Commonwealth of Massachusetts; E. Ellery Anderson, of No. 27 Williams Street, and Frederic R. Coudert, of No. 100 Broadway, both in the said City of New York; and John W. Doane, of No. 45 Wabash Avenue in the City of Chicago, in the State of Illinois; and the collective address of all of whom as Receivers as aforesaid is No. 27 Williams Street in the said City of New York, and Ames Building, in the said Boston, who appear by their Solicitor, W. R. Kelly, of the Union Pacific Building, in the City of Omaha, in the State of Nebraska.

And said defendant, the Union Pacific Railway Company, has a principal place of business in said Boston, and in the said Omaha, in the State of Nebraska, and which appears by its Solicitor, said W. R. Kelly, whose address is as aforesaid.

And said Oliver Ames, Second, of the Ames Building, in the said Boston, and Samuel Carr, Executors, etc., the latter also of said building and city, in the care of J. H. Benton, Jr., Complainants in the third of the above-entitled suits, who appear by (among others) Harwood & Ames, of the City of Lincoln, in the State of Nebraska.

And the Complainants in the second of the above-entitled suits, said F. Gordon Dexter and said Oliver Ames, Second, both of said Boston, the address of the latter of whom is as aforesaid, who appear by their Solicitor, said Winslow S. Pierce, whose address is as aforesaid.

And in the first of the above-entitled suits, the United States appear by their Attorney-General, Joseph McKenna, of the City of Washington, District of Columbia, by their former Attorney-General, Judson Harmon, of the City of Cincinnati, in the State of Ohio, George

Hoadly, Special Assistant to the Attorney-General, of No. 22 Williams Street in the said City of New York, and John C. Cowin, Special Counsel for the United States, of the Ware Block, on the corner of 15th and Farnam Streets in said Omaha.

Louis Fitzgerald, of No. 120 Broadway; Jacob Schiff, of 27 Pine Street, and Chauncey M. Depew, of the Grand Central Station, all in the said City of New York; Marvin Hughitt, of No. 22 Fifth Avenue, in the City of Chicago, in the State of Illinois; T. Jefferson Coolidge, Jr., and Oliver Ames, Second, both of the Ames Building, in the said Boston; and all of whom are all of the members of the Reorganization Committee, hereinbefore mentioned, and whose collective address in such capacity is No. 120 Broadway, in the care of Alvin W. Krech, Secretary.

Kuhn, Loeb & Company, of No. 27 Pine Street, in the said City of New York, who have formed the Reorganization Syndicate hereinbefore mentioned.

Collis P. Huntington, of the said City of New York, the Vice-President of the Central Pacific Railroad Company.

be required by order of notice to be served upon said parties or their solicitors in such manner as the Court may direct to answer the premises, but not under oath, within a day therein to be limited; and to stand to and abide by such other and further orders, judgments, and decrees in the premises as to your Honors shall seem meet.

CREDITS COMMUTATION CO.,
Of Sioux City, Iowa,
By Its Solicitors,
JOHN C. COOMBS,
HENRY J. TAYLOR.

Of Counsel,
John C. Coombs,
25 Equitable Building,
Boston, Mass.
Henry J. Taylor,
Sioux City, Iowa.

STATE OF IOWA, }
COUNTY OF WOODBURY, } ss.

April 27, 1897.

I, Henry J. Taylor, having been duly sworn, state I am solicitor and of counsel for the foregoing petitioner Credits Commutation Company in the matter of said petition, that I have read the petition and know the contents thereof, and that the allegations and statements therein contained are true to the best of my knowledge, information and belief.

HENRY J. TAYLOR,

Subscribed and sworn to before me by the said Henry J. Taylor at Sioux City, Iowa, on this 27th day of April A. D. 1897.

(Seal)

E. A. BURGESS,
Notary Public in and for Woodbury County, Iowa.

April 28, A. D. 1897.

On the foregoing petition it is hereby ordered that said several parties named as respondents to said petition show cause before me in the Court Room of the Circuit Court of the United States in the city of St. Paul, Minnesota, on Thursday, the twentieth day of May, A. D. 1897, at ten o'clock in the forenoon, if any they have, why said petitioner, the Credits Commutation Company of Sioux City, Iowa, should not be permitted to intervene in said several causes as therein entitled, and to proceed in proper time to a hearing upon the matters presented by said petition, and that said petitioner give notice of said hearing to said parties respondent by mailing to each of them or their solicitors, to-wit:

Russell Sage, No. 71 Broadway, in the City of New York.

George J. Gould, No. 71 Broadway, in the City of New York.

Winslow S. Peirce, No. 195 Broadway, in the City of New York.

John F. Dillon, No. 195 Broadway, in the City of New York.

Henry M. Alexander, No. 120 Broadway, in the City of New York.

Charles C. Deming, No. 120 Broadway, in the City of New York.

John A. Stewart, No. 45 Wall street, in the City of New York.

Edward W. Sheldon, No. 45 Wall street, in the City of New York.

William Endicott, Jr., of Boston, Massachusetts.

The Mercantile Trust Company, No. 120 Broadway, in the City of New York.

Alexander & Green, No. 120 Broadway, in the City of New York.

W. W. Green, No. 120 Broadway, in the City of New York.

The Union Trust Company, No. 80 Broadway, in the City of New York.

Wheeler H. Peckham, No. 80 Broadway, in the City of New York.

J. Pierpont Morgan, corner of Wall and Broad streets, in the City of New York.

Edward F. Atkins, of Boston, Massachusetts.

Seward, Guthrie, Morawetz & Steele, of No. 31 Nassau street, in the City of New York.

Wharton & Baird, of the New York Life Building, in the City of Omaha, Nebraska.

The Central Trust Company, No. 54 Wall street, in the city of New York.

Butler, Stillman & Hubbard, No. 54 Wall street, in the city of New York.

Adrian H. Joline, No. 54 Wall street, in the city of New York.

S. H. H. Clark, of St. Louis, Missouri.

Oliver W. Mink, Ames Building, Boston, Massachusetts.

E. Ellery Anderson, No. 27 Williams street, in the city of New York.

Frederic R. Coudert, No. 100 Broadway, in the city of New York.

John W. Doane, No. 45 Wabash avenue, Chicago, Illinois.

The Receivers of the Union Pacific Railway Company, No. 27 Williams street, in the city of New York and of the Ames Building, Boston, Massachusetts.

W. R. Kelly, Union Pacific Building, Omaha, Nebraska.

The Union Pacific Railway Company, having its principal places of business in the said cities of Omaha, Nebraska, and Boston, Massachusetts.

Oliver Ames, Second, and Samuel Carr, Executors, etc., Ames Building, Boston, Massachusetts.

Harwood & Ames, Lincoln, Nebraska.

Oliver Ames, Second, Ames Building, Boston, Massachusetts.

F. Gordon Dexter, Boston, Massachusetts.

Joseph McKenna, Attorney-General of the United States, Washington, District of Columbia.

Judson Harmon, Cincinnati, Ohio.

George Hoadly, No. 22 Williams street, in the City of New York.

John C. Cowin, Ware Block, corner of 15th and Farnam streets, in the City of Omaha, Nebraska.

Louis Fitzgerald, No. 120 Broadway, in the City of New York.

Chauncey M. Depew, Grand Central Station, in the City of New York.

Marvin Hughitt, No. 22 Fifth Avenue, Chicago, Illinois.

T. Jefferson Coolidge, Jr., Ames Building, Boston, Massachusetts.

The Reorganization Committee of the Union Pacific Railway Company, in care of Alvin W. Krech, Secretary, No. 120 Broadway, in the City of New York.

Kuhn, Loeb & Company, No. 27 Pine street, in the City of New York.

Collis P. Huntington, of the City of New York.

a copy of said petition and of this order thereon, by registered mail, postpaid, at least twenty days before said twentieth day of May.

St. Paul, April 28, 1897.

WALTER H. SANBORN,
Circuit Judge.

54

EXHIBIT.

54TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 83.

AGREEMENT WITH REORGANIZATION COMMITTEE, UNION PACIFIC RAILROAD.

JANUARY 25, 1897.—Referred to the Committee on Pacific Railroads and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ATTORNEY GENERAL, IN RESPONSE TO SENATE RESOLUTION OF JANUARY 23, RELATIVE TO AGREEMENT MADE WITH WHAT IS COMMONLY KNOWN AS THE REORGANIZATION COMMITTEE OF THE UNION PACIFIC RAILROAD COMPANY RESPECTING THE FORECLOSURE OF THE GOVERNMENT LIEN ON THE PROPERTY OF SAID COMPANY, AND CORRESPONDENCE IN CONNECTION THEREWITH.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 23, 1897.

SIR: I have the honor, pursuant to the Senate resolution of this date, to say that an agreement has been made with what is commonly known as the Reorganization Committee of the Union Pacific Railway Company respecting the foreclosure of the Government lien on property of said company. I transmit herewith a copy of the letter of the President of the United States under authority of which the agreement was made and foreclosure proceedings have been commenced, and copies of the correspondence which embodies the agreement.

The names of the gentlemen who comprise the reorganization committee are as follows: Louis Fitzgerald, chairman; Jacob H. Schiff, T. Jefferson Coolidge, jr., Chauncey M. Depew, Marvin Hughitt, Oliver Ames, 2d.

These papers set forth all the information called for by the resolution.

After the closing of the agreement I designated the United States Trust Company of New York as the depositary, and thereupon, upon the 21st instant, the sum of $4,500,000 was deposited therein in conformity with the terms of the agreement. The certificate representing such deposit is now in the hands of the Secretary of the Treasury.

I have the honor to be, with great respect, your obedient servant,

JUDSON HARMON,
Attorney-General.

The President of the Senate.

EXECUTIVE MANSION,
Washington, January 12, 1897.

DEAR SIR: The bill which has been for some time pending before the Congress, providing for the adjustment and extension of the indebtedness of the Pacific railroads to the Government of the United States, has been defeated in the House of Representatives.

In the case of the Union Pacific Railroad and the Kansas Pacific Railroad, a default in the payment of their indebtedness having occurred, and suits having been commenced for the foreclosure of the lien upon said roads which is paramount to the lien and security of the United States, you are hereby directed, pursuant to the provisions of an act of Congress passed March 3, 1887, after taking such precautions and perfecting such arrangements as are possible to assure as far as practicable the payment of their indebtedness to the Government as a result of the suits now pending or others to be instituted, to take such proceedings in the courts as shall be needful to protect and defend the rights and interests of the United States in respect of such indebtedness, and to take steps to foreclose the mortgages or liens of the United States upon the property of these railroad companies.

In the case of the other aided Pacific railroads as to which no foreclosure suits are pending, a different situation is presented, which requires further consideration before deciding the course to be taken by the Government.

Yours, truly,

GROVER CLEVELAND.

Hon. JUDSON HARMON,
Attorney-General of the United States.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., JANUARY 18, 1897.

SIR: Hon. George Hoadly, special assistant to the Attorney-General, has sent me your letter to him of the 15th instant, making a proposition on behalf of your committee for a guaranteed minimum bid for the property of the Union Pacific and Kansas Pacific railway companies and the Union Pacific sinking fund as a basis for the Government's proceeding to foreclose its lien thereon. I am authorized by the President to commence foreclosure proceedings, as suggested in your proposal, provided it is modified in the following particulars:

(1) In order to preserve the basis of the original informal negotiations, which took place in the absence of an accurate statement of the sinking fund, your offer should be modified so that the amount of the guaranteed bid therein named will be $45,754,059.99, instead of the sum of $45,000,000.

(2) That the following clause of your proposal be eliminated, viz: "and that, to the extent to which the Government may determine the terms of decree, an equal deposit to be made within a reasonable time before sale shall be required as a qualification of any other bidder." While I have no doubt that the court will follow the uniform practice in railway foreclosures of requiring a deposit of all bidders as a guarantee of good faith and security for performance, and while the Government will obviously have the same interest as other parties in having such condition imposed, I do not wish to make a stipulation on that point as a condition of our arrangement.

(3) That your proposal is understood to mean that in case the property mentioned should not be sold as a unit, minimum bids for the separate portions thereof are to be made which in the aggregate will produce to the Government the net sum above mentioned. In case of separate sales the deposit named by you may of course be used for qualification of bidders representing you at each, in such proportions as may be required under the terms of sale.

(4) Your guaranty applies to such sale or sales as shall become effective. The sale of the sinking fund may be judicial or otherwise.

Your acceptance of the above modifications of your proposal will close the arrangement, and I will proceed to institute foreclosure proceedings on behalf of the Government as soon as the deposit named by

you is made, for which, upon receipt of your acceptance, I will designate the depositary.

Very respectfully,

——— ———,
Attorney General.

LOUIS FITZGERALD, Esq.,
Chairman Reorganization Committee,
Union Pacific Railway Company,
No. 120 Broadway, New York, N. Y.

REORGANIZATION COMMITTEE,
UNION PACIFIC RAILWAY COMPANY,
New York, January, 20, 1897.

Sir: I have your favor of 18th instant, written in reply to my letter of the 15th instant to Hon. George Hoadly, special assistant to the Attorney-General.

On behalf of the reorganization committee of the Union Pacific Railway Company, I have the honor to accept the modifications proposed in your letter of January 18, 1897, to the proposal made in my letter to Hon. George Hoadly dated on the 15th instant.

I am very respectfully,
LOUIS FITZGERALD,
Chairman Union Pacific Reorganization Committee.

HON. JUDSON HARMON,
Attorney-General, Washington, D. C.

NEW YORK, January 15, 1897.

DEAR SIR: Replying, on behalf of the Union Pacific Reorganization Committee, to your favor of the 14th instant, in which you request from this Committee such proposition as it may be willing to make fixing a guaranteed bid at foreclosure and sale for the interest of the United States in the Union Pacific Railway and for the Union Pacific sinking fund, I am authorized to submit to you, and through you to the Executive Department of the Government, the following:

In the event that the Government shall at once take proceedings in the pending foreclosure suits, or by independent bills, for the enforcement of its lien upon the railroad and property of the Union Pacific Railway (which includes the Kansas Pacific line) by sale thereof, and for the sale of the sinking fund in the hands of the Secretary of the Treasury relating to the Union Pacific Railway Company, the Reorganization Committee is prepared to guarantee a minimum bid for the Union and Kansas Pacific lines of railroad and property embraced within the lien of the Government and for the cash and securities in the United States Union Pacific sinking fund, taken at par, which shall produce to the Government, over and above any prior liens and charges upon the railways and sinking fund, the net sum of $45,000,000.

The Committee is prepared to furnish adequate security for the due performance of the above offer. As such security it will deposit with such national depositary in New York city as may be selected by the proper officers of the Government the sum of $4,500,000 in cash (namely, 10 per cent. of the guaranteed bid), subject to the condition that this deposit may be used, under the terms of the foreclosure decree, as a deposit to qualify such bidders as may act on behalf of the Reorganization Committee, and that to the extent to which the Government may determine the terms of decree, an equal deposit, to be made within a reasonable time before sale, shall be required as a qualification of any other bidder. Should the Government desire to liquidate the sinking fund in advance of sale of the railway property the Reorganization Committee will be prepared to anticipate this feature of

its offer by an earlier purchase of the sinking fund at par of the cash and securities therein contained.

As the provision proposed is one of very considerable magnitude and as the proposition is based upon conditions which now exist, it will be obvious that the reorganization committee must reserve, and it desires to be understood as reserving, the right to withdraw this offer at any time previous to its acceptance by the Government.

I have the honor to be, very respectfully, yours,

LOUIS FITZGERALD,
Chairman of the Reorganization Committee
of the Union Pacific Railway Company.

HON. GEORGE HOADLY,
Special Assistant to Attorney-General,
No. 22 Williams street, New York City.

167 United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant, *vs.* UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.	No. 157 S. In Equity.
F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-, *vs.* UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants.	No. 48 R. In Equity.
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et als.*, Complainants, *vs.* UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants.	No. 94 Q. In Equity.

Amendments to Petition of Credits Commutation Company for Leave to Intervene in the Above-entitled Causes.

168 To the honorable judges of the circuit court of the United States for the district of Nebraska:

The Credits Commutation Company respectfully asks leave to amend its petition for leave to intervene in the above-entitled causes herein heretofore filed in the following respects, to wit:

First. By inserting in the first line of the second paragraph on page 2, after the word "of," the following:

"The Combination Bridge Company which has recently completed."

Second. By adding at the bottom of page 3 the following:

"Said combination bridge was built for the purpose, among others, of securing connection with the Union Pacific railroad as herein sought; and to that end received a vote of public aid from the city of Sioux City in the sum of about $300,000, and in the articles of incorporation of the aforesaid Combination Bridge Company, said company is empowered to construct, own and operate railways in the States of Iowa and Nebraska; and your petitioner brings this petition in behalf of said bridge company, as well as itself, and purposes and intends to amend in so far as may be necessary, if at all, its own articles of association so as to enable it to incorporate or cause to be incorporated such railroad company or companies as may be necessary to construct, operate and maintain such connecting railroads from its properties aforesaid with the Union Pacific railroad as may be secured to your petitioner in pursuance of this intervention."

Third. By inserting after the word "company" in the third line on page 4, the following:

"and of eleven of the shares of the capital stock of the said com-

pany, (neither said bond nor stock being a party to nor as-
169 senting to any reorganization or sale herein referred to)."

Fourth. By striking out all of paragraph 30 on page 20.

Fifth. By striking out, on page 27, all of paragraph 44 commencing "and your petitioner shows," etc.

Sixth. By striking out in the 8th line of paragraph 47 on page 28, the words "it is not," and by changing the semicolon in the fourth line thereof to a comma.

Seventh. By striking out the word "whatever" in the 9th line of paragraph 47 on page 28, and inserting in lieu thereof the word "whenever."

Eighth. By striking out the words "did not" in the 10th line on page 33, and inserting after the word "act" in the same line, the words "none of."

Ninth. By striking out the word "became" in the 4th line of paragraph 60 on page 33, and inserting in lieu thereof the words "may have become."

Tenth. By adding after the end of the 3rd line on page 37, the following:

"And that all creditors will be held chargeable with knowledge of that fact."

Eleventh. By striking out the words "is also" in the 16th line on page 38, and inserting in lieu thereof the words "was in fact."

Twelfth. By inserting immediately before the words "by said companies" in the 6th line of paragraph 74 on page 43, the words, "for sinking fund purposes," and by striking out the word "its" in the 8th line of said paragraph and inserting in lieu thereof the word "their."

Thirteenth. By striking out the word "not" in the last line of paragraph 84 on page 48.

170 Fourteenth. By inserting at the beginning of paragraph 88 and before the word "your," the following:

"But, if there may be any lawful foreclosure sale."

Fifteenth. By striking out the first word on page 56 and inserting in lieu thereof the word "asks."

Sixteenth. By inserting immediately before the word "authorize" in the 5th line from the bottom on page 65, the words "and could not."

CREDITS COMMUTATION COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Its Solicitors.

Of counsel:
JOHN C. COOMBS,
25 *Equitable Building, Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed May 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on said 22nd day of May, 1897, petition of Combination Bridge Company for leave to intervene was filed in said case, which said petition is in words and figures following, to wit:

171 United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 157 S. In Equity.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 48 R. In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et als.*, Complainants,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 94 Q. In Equity.

Petition of Combination Bridge Company for Leave to Intervene in the Above-entitled Causes.

To the honorable judges of the circuit court of the United States for the district of Nebraska:

Your petitioner, The Combination Bridge Company, a corporation duly created and organized under the laws of the State of
172 Iowa, having filed with the secretary of the State of Nebraska a true copy of its charter or articles of association and a certified copy of the resolution adopted by its board of directors accepting the provisions of the Nebraska law making foreign corporations domestic, and duly becoming a body corporate also of the State of Nebraska, respectfully prays this honorable court to be permitted to intervene on its own behalf in the above-entitled causes, but in subordination to the intervention of the Credits Commutation Company therein, and especially to intervene should the prayer of the Credits Commutation Company therein on its own behalf be not allowed, or should this petitioner, by reason of standing or otherwise, be found the better entitled so to do, by reason of having built a railroad bridge over the Missouri river from Sioux City, Iowa, to Nebraska, under corporate authority, and with the purpose of securing, as a continuation thereof, railroad connection with the Union Pacific railroad under rights and privileges of existing laws of the United States, or for any other reason.

Your petitioner, on behalf of itself, reaffirms and realleges herein all the statements and allegations made by the Credits Commutation

Company in its petition as amended herein to intervene, as completely as therein stated and with the same force and effect as if herein fully set forth, including all the prayers thereof.

COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Its Solicitors.

Of counsel:
JOHN C. COOMBS,
25 *Equitable Building, Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed May 22, 1897. Oscar B. Hillis, clerk.

173 Thereupon afterwards, to wit, upon the said 22nd day of May, 1897, an order was entered in said cause, and filed May 24th, 1897; which said order is in the words and figures following, to wit:

United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

OLIVER AMES, 2ND, and SAMUEL CARR, Executors, etc., *et al.*, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

And now this cause coming on to be heard on the petition of the Credits Commutation Company for leave to intervene in the above-entitled causes, and also upon the amendments to said petition presented on the hearing and taken as part of said petition, and also upon the supporting petition of the Combination Bridge Company, also presented to the court on said hearing, and upon the order of this court made on April 28, 1897, upon the said petition of the Credits Commutation Company; and it appearing to the court here that the several parties had been notified of the time and place of said hearing as specified and required by the said order of this court, and there appearing upon this hearing for The Credits Commutation Company and for The Combination Bridge Company, petitioners, Mr. John C. Coombs and Mr. Henry J. Taylor, for the

Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, receivers thereof, Mr. John F. Dillon and Mr. W. R. Kelly, for F. Gordon Dexter and Oliver Ames, 2nd, trustees, Mr. Winslow S. Pierce, and for the United States of America, Mr. George Hoadly and Mr. John C. Cowin, and now the court having heard arguments of counsel and being fully advised in the premises, it is—

Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, not as matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners or either of them have a legal right to in-
174 tervene, and upon prayer of the petitioners an appeal to the circuit court of appeals is hereby allowed. The bond on such appeal is fixed at the sum of one thousand dollars.

Dexter and Ames, trustees, complainants and the United States of America, the Union Pacific Railway Company, and the said receivers by their respective counsel duly excepting to such part of this order as grants an appeal.

WALTER H. SANBORN,
Circuit Judge.

May 22, 1897.

Indorsed: Filed May 24, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on June 28th, 1897, petition for appeal was filed in said case; which said petition is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY, THE UNITED States of America, The Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, Copartners under the Firm Name and Style of F. H. Peavy & Company; The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Defendants.

No. 48 "R." In Equity.

In the Matter of the Petitions of the CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY for Leave to Intervene Herein.

175 *Petition for Appeal.*

To the honorable circuit court of the United States for the district of Nebraska:

Your petitioners, The Credits Commutation Company, and The Combination Bridge Company, petitioners for leave to intervene in the above-entitled cause, each for itself, would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court in and for the district of Nebraska, there was entered at the May term, 1897, under date May 22, 1897, in said court, a final order or decree, greatly to the prejudice of your pe-

titioners, which said order or decree is erroneous and inequitable in many respects.

Wherefore, in order that your petitioners may obtain relief in the premises, and have opportunity to show the errors complained of, your petitioners severally and each for itself prays that it may be allowed an appeal in this case to the United States circuit court of appeals for the eighth circuit, and that the proper orders touching security required of them may be made.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.,
HENRY J. TAYLOR,
Sioux City, Iowa,
Their Solicitors and Counsel.

Of counsel:
JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed June 28, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 28th day of June, 1897, assignment of errors was filed in said case; which said assignment of errors is in words and figures following, to wit:

176 In the Circuit Court of the United States for the District of Nebraska.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,
v.
THE UNION PACIFIC RAILWAY COMPANY, THE UNITED States of America, The Union Trust Company of New York; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, Copartners under the Firm Name and Style of F. H. Peavy & Co.; The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Defendants.

No. 48 "R." In Equity.

In the Matter of the Petitions of the CREDITS COMMUTATION COMPANY and COMBINATION BRIDGE COMPANY for Leave to Intervene.

Assignment of Errors on Appeal Severally in Behalf of The Credits Commutation Company and The Combination Bridge Company, Appellants.

On the 28th day of June A. D. 1897, came the undersigned, Credits Commutation Company, and Combination Bridge Company, appellants, by John C. Coombs and Henry J. Taylor, their solicitors and counsel, and each severally and separately for itself, says that the decree in said cause is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

1. Because the court erred in denying the petitions of said Credits Commutation Company and said Combination Bridge Company, for leave to intervene herein.

177 2. Because the court erred in decreeing that the petitions of said Credits Commutation Company and said Combination Bridge Company, do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

3. Because the court erred in not granting the petition of the Credits Commutation (—) Bridge Company for leave to intervene herein.

4. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

5. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

6. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

Wherefore, these appellants severally pray, each for itself, that the said decree be reversed and that the said court be ordered to enter a decree in accordance with the prayers of the respective pleadings of these appellants.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.,
HENRY J. TAYLOR,
Sioux City, Iowa,
Solicitors and Counsel for Intervening Petitioners and Appellants.

Of counsel:
JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed June 28, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 22nd day of July, 1897, appeal bond was filed in said case; which said appeal bond is in words and figures following, to wit:

Know all men by these presents that we, the Credits Commutation Company, and the Combination Bridge Company, principals, and F. L. Eaton and Henry J. Taylor, sureties, are held and firmly bound unto F. Gordon Dexter and Oliver Ames, second,
178 trustees, The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, trustees, The Central Trust Company of New York, trustee, The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line and Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley

Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener, and Charles T. Peavy, copartners under the firm name and style of F. H. Peavy & Co., The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, called herein the respondents, in the full and just sum of one thousand dollars ($1,000), to be paid to the said respondents, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of June, in the year of our Lord eighteen hundred and ninety-seven.

Whereas lately, at the May term, 1897, of the circuit court of the United States for the district of Nebraska, in a suit pending in said court between the said respondents and the said Credits Commutation Company and Combination Bridge Company, petitioners, for leave to intervene therein, a decree or order was rendered against said Credits Commutation Company and Combination Bridge Company, petitioners, and the said named petitioners have obtained a writ of appeal of the said court to reverse the said order or decree in the aforesaid suit, and a citation directed to the said respondents, citing and admonishing them to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said Credits Commutation Company and Combination Bridge Company shall prosecute said appeal to effect and answer all costs if
179 they fail to make good their plea, then the above obligation, which is only a bond for costs and not a supersedeas bond, to be void; else to remain in full force and virtue.

CREDITS COMMUTATION COMPANY, [SEAL.]
By F. L. EATON,
Secretary and General Manager, Principal.
COMBINATION BRIDGE COMPANY, [SEAL.]
By F. L. EATON, *Secretary, Principal.*
F. L. EATON, *Surety.* [SEAL.]
HENRY J. TAYLOR, *Surety.* [SEAL.]

Signed and delivered in the presence of—
E. A. BURGESS.

STATE OF IOWA, }
Woodbury County, } *ss:*

F. L. Eaton and Henry J. Taylor, sureties on the within and foregoing bond, being duly sworn, each for himself severally deposes

and says that he is worth, after paying his just debts, more than one thousand dollars, exclusive of property exempt from execution by the laws of the State in which he resides.

F. L. EATON.
HENRY J. TAYLOR.

Subscribed and sworn to before me by the above-named F. L. Eaton and Henry J. Taylor, this 28th day of June, A. D. 1897.

[SEAL.] E. A. BURGESS,
Notary Public within and for Woodbury County, State of Iowa.

The above bond is approved this 22nd day — July, A. D. 1897.

W. H. MUNGER,
District Judge.

Approved July 29, 1897.
WALTER H. SANBORN,
Circuit Judge.

Indorsed: Filed July 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 29th day of July, 1897, the following order was signed and filed in said case; which said order is in words and figures following, to wit:

180 In the Circuit Court of the United States for the District of Nebraska.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants, *v.* UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 48 "R." In Equity.

CREDITS COMMUTATION COMPANY and COMBINATION Bridge Company, Intervening Petitioners, *v.* UNION PACIFIC RAILWAY COMPANY and All Other Parties to This Suit, Respondents.

And now, on this 29 day of July, A. D. 1897, the above cause came on upon the hearing of the petitions of the Credit- Commutation Company and the Combination Bridge Company, for the allowance of appeals herein from the order or decree entered herein at the May term, 1897, denying said parties leave to intervene herein, and in open court, and at the same term thereof at which said order or decree complained of was so entered and rendered by this court, said appeals are hereby allowed, and security for costs fixed at one thousand dollars, and the bond for costs on appeal now filed herein is approved.

WALTER H. SANBORN, *Judge.*

Indorsed: Filed July 29, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 29th day of July, 1897, a citation was duly issued in said case, and returned and filed on the said 29th day of July, 1897, the following of which is the original:

United States of America to F. Gordon Dexter and Oliver Ames, Second, trustees; the Union Pacific Railway Company, the United States of America, the Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, trustees; the Central Trust Company of New York, trustee; the Central Pacific Railroad Company, the Southern Pacific Company, the St. Joseph & Grand Island Railroad Company, the Kansas City & Omaha Railroad Company, the Oregon Railway & Navigation Company, the Oregon Short Line & Utah Northern Railway Company, the Union Pacific, Lincoln & Colorado Railway Company, the Chicago & Northwestern Railway Company, the Omaha & Republican Valley Railway Company, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener, and Charles T.
181 Peavy, copartners under the firm name and style of F. H. Peavy & Company; the Union Pacific, Denver & Gulf Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, the Chicago, Kansas & Nebraska Railway Company, the Missouri Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, and John W. Doane, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal filed in the office of the circuit court of the United States for the district of Nebraska, wherein The Credits Commutation Company and The Combination Bridge Company are appellants, and you are appellees, to show cause, if any there be, why the order or decree rendered against the said appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Seal United States Circuit Court, District of Nebraska.

Witness the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the district of Nebraska, this 29 day of July, in the year of our Lord, eighteen hundred and ninety-seven.

WALTER H. SANBORN,
Circuit Judge.

48 R. In equity. U. S. circuit court, district of Nebraska. F. Gordon Dexter *et al. v.* Union Pacific R'y Co. *et al.* Citation. Filed Jul- 29, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on the 21st day of August, 1897, acceptance of service of citation by Winslow S. Pierce, sol. for Dexter

and Ames, trustees, was filed in said case; which said acceptance is in words and figures following, to wit:

182 United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." In Equity.
F. GORDON DEXTER and OLIVER AMES, SECOND, v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." In Equity.
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." In Equity.

Personal service of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 13th, A. D. 1897.

WINSLOW S. PIERCE,
Sol'r for Dexter & Ames, Trustees.

Indorsed: Filed Aug. 21, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on said 21st day of August, 1897, acceptance of service of citation by Geo. Hoadly, sp'l ass't to att'y general, was filed in said case; which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." In Equity.
F. GORDON DEXTER and OLIVER AMES, SECOND, v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." In Equity.
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." In Equity.

Personal service of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company,

signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 16, A. D. 1897.

GEO. HOADLY,
Special Assistant to the Attorney General in Union Pacific Matters.

Indorsed: Filed Aug. 21st, 1897. Oscar B. Hillis, clerk.

183 Thereupon afterwards, to wit, on the said 21st day of August, 1897, acceptance of service of citation by John C. Cowin, special counsel for the United States, was filed in said case, which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." In Equity.	
F. GORDON DEXTER and OLIVER AMES, SECOND, *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." In Equity.	
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." In Equity.	

Personal service upon me of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 12th, A. D. 1897.

JOHN C. COWIN,
Special Counsel for United States.

Indorsed: Filed Aug. 21, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 23rd day of August, 1897, acceptance of service of citation by W. R. Kelly, sol'r for U. P. R'y Co., and receivers, was filed in said case, which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA
v.
UNION PACIFIC RAILWAY COMPANY ET AL. } No. 157 "S." In Equity.

F. GORDON DEXTER and OLIVER AMES, SECOND,
v.
UNION PACIFIC RAILWAY COMPANY ET AL. } No. 48 "R." In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc.,
v.
UNION PACIFIC RAILWAY COMPANY ET AL. } No. 94 "Q." In Equity.

Personal service upon me of the citation of appeal on behalf of the Credits Commutation Company and the Combination
184 Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 21st, A. D. 1897.

W. R. KELLY,

Counsel for Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

Indorsed: Filed Aug. 23, 1897. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the foregoing folios from one (1) to two hundred and twenty-nine (229), inclusive, contain true and faithful transcripts of all the pleadings, process and proceedings of record and on file in said court, in the matter of the petition of Credits Commutation Company and Combination Bridge Company for leave to intervene, filed in the case of F. Gordon Dexter *et al.*, trustees, *vs.* The Union Pacific Railway Company *et al.*, and that a copy of the citation, duly certified, has been lodged and remains in my office as such clerk.

Seal United States Circuit Court, District of Nebraska.

Witness my hand and the seal of said circuit court at Omaha in said district, this 30th day of August, A. D. 1897.

OSCAR B. HILLIS, *Clerk,*
By R. R. BITTINGER,
Deputy Clerk.

Filed Sep. 9, 1897. John D. Jordan, clerk.

185 And on the ninth day of September, A. D. 1897, an appearance of counsel for the appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION CO. ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter *my* appearance as counsel for the appellants.

JOHN C. COOMBS,
25 *Equitable Bldg., Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 996. Credits Commutation Company *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Sep. 9, 1897. John D. Jordan, clerk. John C. Coombs, Henry J. Taylor, counsel for appellants.

And on the eighteenth day of October, A. D. 1897, an appearance of Mr. George Hoadly, counsel for appellee The United States was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION CO. ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter my appearance as counsel for The United States of America, appellee.

GEO. HOADLY.

Endorsed: U. S. circuit court of appeals, eighth circuit, May
186 term, 1897. No. 996. Credits Commutation Co. *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Oct. 18, 1897. John D. Jordan, clerk. George Hoadly, counsel for appellee The United States.

And on the eleventh day of November, A. D. 1897, an appearance of Mr. John C. Cowin, counsel for the United States, was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter my appearance as counsel for the appellee The United States of America.

JOHN C. COWIN,
Special Counsel for the United States.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 996. Credits Commutation Co. *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Nov. 11, 1897. John D. Jordan, clerk. John C. Cowin, Omaha, Neb., counsel for appellee.

And on the fifth day of January, A. D. 1898, an appearance of Messrs. John F. Dillon and W. R. Kelly, counsel for the receivers, was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter *my* appearance as counsel for the appellees, the receivers, &c.

JNO. F. DILLON &
W. R. KELLY.

187 Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1897. No. 996. Credits Commutation Company *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Jan. 5, 1898. John D. Jordan, clerk. John F. Dillon, W. R. Kelly, counsel for appellees, rec'rs.

And on the seventh day of December, A. D. 1898, an appearance of counsel for certain appellees was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter *my* appearance as counsel for the appellees.

WINSLOW S. PIERCE,
For F. Gordon Dexter et al.
G. M. LAMBERTSON,
For Receivers Union Pacific Railway Company and Union Pacific R'y Co.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1898. No. 996. Credits Commutation Company *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Dec. 7, 1898. John D. Jordan, clerk. Winslow S. Pierce, G. M. Lambertson, counsel for certain appellees.

And on the thirty-first day of December, A. D. 1897, there was filed in the clerk's office of said circuit court of appeals a certain notice and motion to dismiss in words and figures following:

188 STATE OF NEW YORK, } *ss.*:
City and County of New York, }

B. W. J. Fox, being duly sworn, deposes and says that he is above the age of twenty-one years and is a citizen and resident of the said State.

That on the 29th day of December, 1897, he served upon the parties below named a copy of the annexed notice and motion of F. Gordon Dexter and Oliver Ames, Second, trustees, by depositing in the United States post-office in the city of New York copies of said notice and motion, enclosed in sealed envelopes, postage fully prepaid, and addressed respectively as hereinafter shown:

John C. Coombs, Equitable building, Boston, Mass.; Henry J. Taylor, Sioux City, Iowa.

And further affiant sayeth not.

B. W. J. FOX.

Sworn to before me this 29th day of December, 1897.
[SEAL.]
JOHN C. SANDERS,
Notary Public, # 8, New York Co.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to Dismiss by F. Gordon Dexter and Oliver Ames, Second, Trustees.

189 Now come F. Gordon Dexter and Oliver Ames, Second, trustees, by their counsel, and move the court for orders dismissing the appeals taken in each of the above-entitled cases by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain causes the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court in denying such application exercised its discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

F. GORDON DEXTER AND
OLIVER AMES, SECOND, *Trustees*,
By WINSLOW S. PIERCE,
R. S. HALL, *Their Counsel*.

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

190 THE CREDITS COMMUTATION COMPANY and THE Combination Bridge Company, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION Bridge Company, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

To Messrs. John C. Coombs and Henry J. Taylor, counsel for appellants:

Please take notice that on Monday, the 10th day of January, 1898, at the opening of the court, or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy will be submitted to the United States circuit court of appeals for the eighth circuit for the decision of the said court thereon.

WINSLOW S. PIERCE,
R. S. HALL,
Counsel for Appellees F. Gordon Dexter and Oliver Ames, Trustees, for the Purpose of This Motion.

Endorsed: U. S. circuit court — appeals, eighth circuit, Dec. term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees, and one other case. Notice of motion to dismiss by F. Gordon Dexter and Oliver Ames, Second, trustees. Filed Dec. 31, 1897. John D. Jordan, clerk.

And on the thirty-first day of December, A. D. 1897, there was filed a certain notice and motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.*, receivers, in the words and figures following, to wit:

191 STATE OF NEW YORK, }
City and County of New York, } *ss.*:

B. W. J. Fox, being duly sworn, deposes and says that he is above the age of twenty-one years and is a citizen and resident of said State.

That on the 29th day of December, 1897, he served upon the parties below named a copy of the annexed notice and motion of the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, receivers, by depositing in the United States post-office in the city of New York copies of said notice and motion, enclosed in

sealed envelopes, postage fully prepaid, and addressed respectively as hereinafter shown:

John C. Coombs, Equitable building, Boston, Mass.
Henry J. Taylor, Sioux City, Iowa.

And further affiant sayeth not.

B. W. J. FOX.

Sworn to before me this 29th day of December, 1897.

[SEAL.] JOHN C. SANDERS,
Notary Public, # 8, *New York Co.*

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
192 OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., Appellees. } No. 997.

To Messrs. John C. Coombs and Henry J. Taylor, counsel for appellants:

Please take notice that on Monday, the 10th day of January, A. D. 1898, at the opening of the court, or as soon thereafter as counsel can be heard, the motion, of which the foregoing is a copy, will be submitted to the United States circuit court of appeals for the eighth circuit for the decision of the said court thereon.

JOHN F. DILLON,
WM. R. KELLY,
Counsel for the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, ET AL., Appellees. } No. 996.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, *et al.*, Appellees. } No. 997.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to Dismiss by the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

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Now come the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers, by John F. Dillon and W. R. Kelly, their solicitors, and move the court for orders dismissing the appeals taken in each of the above entitled cases by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court in denying such application exercised the discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Com-

pany and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

THE UNION PACIFIC RAILWAY COMPANY AND
S. H. H. CLARK,
OLIVER W. MINK,
E. ELLERY ANDERSON,
FREDERIC R. COUDERT, AND
JOHN W. DOANE,
Receivers,
By JOHN F. DILLON,
WM. R. KELLY,
Their Solicitors.

194 Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees, and two other cases. Notice of motion to dismiss by the Union Pacific Railway Company, S. H. H. Clark, *et al.* Filed Dec. 31, 1897. John D. Jordan, clerk.

And on the twenty-eighth day of November, A. D. 1898, there was filed in the clerk's office of said court in said cause a certain notice and amended motion to dismiss in words and figures following, to wit:

195 United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *against* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees.	No. 996.

To John C. Coombs, Esq., Equitable building, Boston, Mass., and to Henry J. Taylor, Esq., Sioux City, Iowa.

GENTLEMEN: Please take notice that we have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceedings above entitled, an amended and supplemental motion to dismiss the appeal therein, of which the attached is a copy. Counsel for appellees will call up said motion for hearing at 10 o'clock a. m., on Monday, December 5th, 1898, or as soon thereafter as counsel can be heard.

Dated November 25th, 1898.

WINSLOW S. PIERCE,
Counsel for F. Gordon Dexter and Oliver Ames, Second, Trustees.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees.
No. 996.

Amended and Supplemental Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to dismiss by F. Gordon Dexter and Oliver Ames, Second, trustees.

Now come F. Gordon Dexter and Oliver Ames, Second, trustees, by Winslow S. Pierce, their solicitor, and move the court for order dismissing the appeal taken in the above-entitled case by
196 The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which said appeal is taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court, in denying such application, exercised the discretionary powers and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of the said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petition- of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because the appellants did not docket the said appeal and file the record of said case with the clerk of this court as and within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said inter-
197 vention was sought has gone to a final decree and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

WINSLOW S. PIERCE,
Counsel for F. Gordon Dexter and Oliver Ames, Second, Trustees.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 996. The Credits Commutation Company and The Combination Bridge Company, appellants, against F. Gordon Dexter and Oliver Ames, trustees. Notice of and amended motion to dismiss by F. Gordon Dexter and Oliver Ames, trustees. Filed Nov. 28, 1898. John D. Jordan, clerk.

And on the twenty-eighth day of November, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals in said cause a notice and amended motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.*, receivers, in words and figures following, to wit:

198 United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees.
No. 996.

To John C. Coombs, Esq., Equitable building, Boston, Mass., and to Henry J. Taylor, Esq., Sioux City, Iowa.

GENTLEMEN: Please take notice that we have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceedings above entitled, an amended and supplemental motion to dismiss the appeal therein, of which the attached is a copy. Counsel for appellees will call up said motion for hearing at 10 o'clock a. m. on Monday, December 5th, 1898, or as soon thereafter as counsel can be heard.

Dated November 25, 1898.

G. M. LAMBERTSON,
Counsel for the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees.
No. 996.

Amended and Supplemental Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to dismiss by the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers.

199 Now come the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers, by their counsel, and move the court for orders dismissing the appeals taken in the above entitled case by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit court- of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court, in denying such application, exercised the discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because the appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because appellants did not docket the said appeal and file

the record of said case with the clerk of this court as and
200 within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said intervention was sought has gone to a final decree and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

G. M. LAMBERTSON,
Counsel for the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 996. The Credits Commutation Company and The Combination Bridge Company, appellants, against F. Gordon Dexter and Oliver Ames, Second, trustees, *et al.*, appellees. Notice of and amended motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.* Filed Nov. 28, 1898. John D. Jordan, clerk.

201 And on the second day of December, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals a notice and motion to dismiss by the United States in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *v.* F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*, Appellees.	No. 996. Affidavit.

STATE OF NEBRASKA, } ss:
County of Douglas, }

John C. Cowin, being first duly sworn, deposes and says that he is special counsel for the United States of America in the above-entitled cause; that as such special counsel, on the 30th day of November, 1898, about the hour of twelve o'clock noon, he deposited in the post-office a copy of the notice and motion hereto attached, addressed to Henry J. Taylor, Esquire, Sioux City, Iowa.

JOHN C. COWIN.

Subscribed in my presence and sworn to before me this 30th day of November, 1898.

[SEAL.] MARY A. SHAW,
Notary Public within and for Douglas County, Nebraska.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*, Appellees.	No. 996. Notice of Motion to Dismiss Appeal.

To John Coombs, Esquire, Equitable building, Boston, Mass., and to Henry J. Taylor, Esquire, Sioux City, Iowa.

GENTLEMEN: Please take notice that on behalf of the
202 United States of America I have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceedings above entitled, a motion to dismiss the appeal therein, of which a copy is hereto attached.

Said motion will be called up for hearing at ten o'clock a. m. on Tuesday, December 6, 1898, at the court-room, at St. Louis, or as soon thereafter as counsel can be heard.

Dated Nov. 30th, 1898.

JOHN C. COWIN,
Special Counsel for the United States.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *v.* F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*, Appellees.	No. 996. Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the District of Nebraska.

Motion to Dismiss Appeals by the United States of America.

Now comes the United States of America, by John C. Cowin, its counsel, and move the court for orders dismissing the appeals taken in the above-entitled cause by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States

within the meaning of section 6 of the act of Congress approved March 3, 1891, defining and regulating in certain cases the jurisdiction of the courts of the United States and for other purposes.

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled cause, and the court in denying such application exercised the discretionary powers, and its action cannot be reviewed by this court.

203 Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because the appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because the appellants did not docket the said appeal and file the record of said case with the clerk of this court as and within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said intervention was sought has gone to a final decree, and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

Eighth. Because said applications to intervene and the said appeals are attempted proceedings and litigation on the part of the petitioners against the United States of America, which have never consented that such proceedings be brought against them, but have objected and still do object to the same.

JOHN C. COWIN,
Special Counsel for the United States of America.

204 Endorsed: No. 996. United States circuit court of appeals for the eighth circuit. The Credits Commutation Co. and The Combination Bridge Company, appellants, *vs.* F. Gordon Dexter and Oliver Ames, Second, trustees, *et al.*, appellees. Notice and motion by United States to dismiss the appeals. Filed Dec. 2, 1898. John D. Jordan, clerk. John C. Cowin, special counsel for the United States.

205 And on the second day of December, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals a certificate of clerk as to time of filing assignment of errors in words and figures following, to wit:

United States Circuit Court, District of Nebraska. In Equity.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-, *vs.* UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 48 R. In Equity.

Additional and Supplemental Transcript of Record to Correct Original Transcript of Record in United States Circuit Court of Appeals for Eighth Circuit.

Pleas before the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the eighth judicial circuit, sitting in the circuit court of the United States for the district of Nebraska, within the said eighth judicial circuit, at the May term, A. D. 1897.

Be it remembered that on the 28th day of June, 1897, the Credits Commutation Company and Combination Bridge Company filed in said case their assignment of errors and their petition for appeal set out in the original abstract now on file in the said United States circuit court of appeals, and said assignment of errors was filed with the clerk of this court at the same time as and with said petition for appeal.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of United States for the district of Nebraska, do hereby certify that the above contains a true and faithful statement and transcript of the time and fact of the filing in said court of the said assignment of errors and petition for appeal in the matter of the petition of Credits Commutation Company and Combination Bridge Company for leave to intervene, filed in the case of F. Gordon Dexter *et al.*, trustees, *vs.* Union Pacific Railway Company *et al.*

206 Witness my hand and the seal of said circuit court, at Omaha, in said district, this 30th day of November, A. D. 1898.

[SEAL.] OSCAR B. HILLIS, *Clerk.*

[Cancelled 10c. internal-revenue stamp.]

Endorsed: 996. Credits Commutation Co. *et al.*, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Certificate of clerk as to time of filing assignment of errors. Filed Dec. 2, 1898. John D. Jordan, clerk.

207 And on the seventh day of December, A. D. 1898, in the record of the proceedings of said circuit court of appeals is an order of submission of said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

WEDNESDAY, *December* 7, 1898.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause having been called for hearing in its regular order, and Judge Sanborn, being disqualified, retired and took no part in the hearing.

Thereupon the several motions to dismiss filed herein were argued by Mr. Winslow S. Pierce and Mr. G. M. Lambertson in support thereof, and by Mr. John C. Coombs in opposition thereto; whereupon the said motions were submitted and by the court taken under advisement.

And on the seventh day of December, A. D. 1898, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

208 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants,
vs.
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995. Appeal from the Circuit Court of the United States for the District of Nebraska.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants,
vs.
F. GORDON DEXTER and OLIVER AMES, Second, *et al.*, Appellees. } No. 996. Appeal from the Circuit Court of the United States for the District of Nebraska.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants,
vs.
OLIVER AMES, SECOND, and SAMUEL Carr, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, *et al.*, Appellees. } No. 997. Appeal from the Circuit Court of the United States for the District of Nebraska.

Mr. Winslow S. Pierce and Mr. G. M. Lambertson (Mr. Lawrence Greer was with them on the brief) for the motion.

Mr. John C. Coombs and Mr. Henry J. Taylor, *contra*.

Before Caldwell and Thayer, circuit judges.

Per Curiam:

These cases are before the court on the present occasion on motions to dismiss the several appeals. The appeals were taken from orders made by the Honorable Walter H. Sanborn, circuit judge, which denied the application of The Credits Commutation Company and The Combination Bridge Company, the appellants, for leave to intervene in three suits which were at the time pending in the circuit court of the United States for the district of Nebraska. One
209 of these suits was a bill filed on October 9, 1893, by Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, *et al.*, against the Union Pacific Railway Company, *et al.*, which is commonly termed "the stockholders' suit;" the other was a bill which was filed on January 21, 1895, by F. Gordon Dexter and Oliver Ames, Second, trustees, against the Union Pacific Railway Company, *et al.*, for the purpose of foreclosing the first mortgage on the Union Pacific railway; and the third was a bill filed on January 23, 1897, by the United States against the Union Pacific Railway Company, *et al.*, for the purpose of foreclosing its statutory lien upon the property of said railway company.

On April 28, 1897, when said cases were about ripe for a final decree, the Credits Commutation Company and the Combination Bridge Company presented an intervening petition to Judge Sanborn, and asked leave to file the same in each of said suits, and thereby become parties thereto. On the presentation of the intervening petition an order was made requiring all parties in interest in said suits to show cause, on a day specified, why the prayer of the petitioners for leave to intervene should not be granted. On the return day of said order, objections to the filing of said intervening petition having been duly made and considered, it was ordered "that the prayers of the petitioners for leave to intervene herein, be, and the same are hereby denied, not as a matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners, or either of them, have a legal right to intervene." From this order which was entered at the same time and in the same form in each of the above cases the present appeals were taken.

The ground upon which the petitioners below, who are the appellants here, sought leave to intervene in the pending litigation against the Union Pacific Railway Company, was as follows:

The Credits Commutation Company alleged that it was entitled as beneficiary in a deed of assignment, to three-fourths of the capital stock of the Sioux City & Northern Railway Company, which was a railroad extending northwardly from Sioux City, Iowa, for a distance of about one hundred miles to a junction with the Great Northern railroad in the State of Minnesota; that it was also entitled to all the stock of the Sioux City, O'Neill & Western railroad, which was a road extending westwardly from Sioux City, Iowa, to O'Neill, Nebraska, a distance of about one hundred and thirty miles; that these roads were connected at Sioux City, Iowa, by a bridge across

the Missouri river, whose capital stock was all owned by the Credits Commutation Company; that the petitioners proposed to extend the Sioux City, O'Neill & Western railroad to a junction with the Union Pacific railroad in the western part of the State of Nebraska; that their ultimate design was to form a line of transportation by means of the aforesaid railroad and bridge companies, and certain terminal properties in Sioux City which the petitioners then owned, and thereby promote an interchange of traffic between the head of the Great Lakes at Duluth, and the region of country lying west of the Missouri river opposite to Sioux City. They further averred in the intervening complaint that by virtue of various provisions of the act creating the Union Pacific Railway Company and the amendments thereof, particularly by sections 14 and 15 of the act of July 1, 1862, (12 Stat., 489, c. 120) and by section 17 of the act of
210 July 2, 1864, (13 Stat., 356, c. 216) * * * the right was accorded to the petitioners to form a junction with the Union Pacific railroad not farther west than the one hundredth meridian of longitude, whenever they should have completed their proposed line of railroad through the States of Iowa *or* Minnesota to Sioux City, and thence southwestwardly to a point on the main line of the Union Pacific railroad. In view of the foregoing facts, the petitioners craved leave to intervene and be made parties to the three suits then pending against the Union Pacific Railway Company, to the end that they might, in the first place, resist and if possible prevent a foreclosure sale of the property and franchises of said railroad company under decrees made in the pending suits, or if defeated in that object, to the end that they might preserve their alleged right to connect their proposed line of railroad with the main line of the Union Pacific Railway Company, by appropriate provisions inserted in the decree of foreclosure, provided a foreclosure sale of the latter company's property and franchise should eventually be ordered.

The motion to dismiss the several appeals is grounded on the proposition that the order from which the several appeals were taken was not a final judgment or decree from which an appeal will lie to this court, and upon the further proposition that the action of the lower court in refusing leave to intervene is not reviewable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention. Both of these positions are, in our opinion, well taken. The order denying leave to intervene was not final within any of the definitions usually given of a final order or decree, inasmuch as it did not dispose of the petitioners' alleged right to form a junction with the main line of the Union Pacific railroad, which was the substantial right asserted, but left them at full liberty to litigate that question by an original bill, or by any other method of procedure which they saw fit to adopt. The trial court could not, and did not, finally adjudicate any of the questions which were presented by the intervening complaint, for the reason that it refused to give the petitioners a standing in court to be heard with respect to such questions, and also refused to permit the intervening complaint to be filed and become a part of the

record. None of the issues, therefore, which were tendered by the petitioners in their intervening complaint ever passed under judicial review in such a manner as to estop the petitioners from tendering like issues on any future occasion, because the trial court refused to allow such issues to be incorporated into the pending suits in such a form that they could be tried and determined. When such action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such orders not only lack the finality which is necessary to support an appeal, but it is usually said of them that they cannot be reviewed because they merely involve an exercise of the discretionary powers of the trial court. *Ex parte Cutting*, 94 U. S., 14; *Hamlin v. Continental Trust Company of the City of New York*, 47 U. S. App., 422, 428, 429; 78 Fed. Rep., 664; *Jones & Laughlins, Limited, v. Sands*,
211 51 U. S. App., 153, 157; 79 Fed. Rep., 913; *In re Streett, petitioner*, 8 U. S. App., 645, 650; 62 Fed. Rep., 218.

It is doubtless true that cases may arise where a denial of the right of a third party to intervene therein would be a practical denial of certain relief to which the intervener is fairly entitled, and can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration, to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervener's claim by denying him all right to relief. The cases at bar, however, are not of that character. The petitioners were under no obligation to intervene in the litigation against the Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation could, we think, with more propriety and with less difficulty, have been litigated by an independent bill, after they had completed, or were about completing their line to a suitable junction point. Prior to that time the questions which they sought to raise by means of the intervening petition were speculative questions, which the lower court, as we think, very properly refused to consider or determine.

It was suggested in argument that as the lower court saw fit to insert a clause in its order that it had not refused leave to intervene "as a matter of discretion," but because the petitioners had no legal right to intervene, therefore the motion to dismiss is not tenable, so far as it is based on the discretionary character of the order. The answer to this suggestion is that the trial court by inserting such a clause in its order explanatory thereof, could not give an effect to the order which was in any respect different from the effect which it had by virtue of the nature of the proceeding in which the order

was made. The intervening petition merely invoked the discretionary power of the court, and it could exercise no other power in the premises, whatever the purpose of the court or its own declaration on the subject may have been. The fact is that the lower court simply exercised its discretionary authority in denying leave to intervene, and it did not succeed in rendering a judgment upon the merits of the petitioners' claim which will conclude them in any subsequent suit, although it may have intended to do so. As it is now well settled since the decision in *McLish v. Roff*, 141 U. S., 661, that an appeal will only lie to this court from orders or decrees which are final in their character, and which involve something more than the exercise of purely discretionary powers (except in some cases for which special provision is made by the seventh section of the act under which this court was created, 26 Stat., 826, c. 517)—it follows that the appeals cannot be entertained, and that the motions to dismiss the same must be sustained. It is so ordered.

Filed December 7, 1898.

212 And on the seventh day of December, A. D. 1898, in the record of the proceedings of said circuit court of appeals is a decree in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

WEDNESDAY, *December* 7, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
vs.
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph and Grand Island Railroad Company, The Kansas City and Omaha Railroad Company, The Oregon Railway and Navigation Company, The Oregon Short Line and Utah Northern Railway Company, The Union Pacific, Lincoln and Colorado Railway Company, The Chicago and Northwestern Railway Company, The Omaha and Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, Copartners under the Firm Name and Style of F. H. Peavy and Company; The Union Pacific, Denver and Gulf Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Salina and Southwestern Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, Kansas and Nebraska Railway Company, The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert and John W. Doane, and The Kearney & Black Hills Railway Company. } No. 996.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska and upon the several motions and amended motions to dismiss filed by appellees and was argued by counsel.

On consideration whereof it is now here ordered, adjudged,
213 and decreed by this court that said motions be, and the same are hereby, sustained, and that the appeal from the said circuit court in this cause be, and the same is hereby, dismissed with costs, and that F. Gordon Dexter and Oliver Ames, Second, trustees; the Union Pacific Railway Company, the United States of America, the Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, trustees; the Central Trust Company of New

York, trustee; the Central Pacific Railroad Company, the Southern Pacific Company, the St. Joseph and Grand Island Railroad Company, the Kansas City and Omaha Railroad Company, the Oregon Railway and Navigation Company, the Oregon Short Line and Utah Northern Railway Company, the Union Pacific, Lincoln and Colorado Railway Company, the Chicago and Northwestern Railway Company, the Omaha and Republican Valley Railway Company, the Chicago, St. Paul, Minneapolis and Omaha Railway Company, the Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, copartners under the firm name and style of F. H. Peavy and Company; the Union Pacific, Denver and Gulf Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, the Salina and Southwestern Railway Company, the Chicago Rock Island and Pacific Railway Company, the Chicago, Kansas and Nebraska Railway Company, the Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, and John W. Doane have and recover against the Credits Commutation Company and the Combination Bridge Company the sum of twenty dollars for their costs herein and have execution therefor.

To which ruling, order, and decree the appellants, by their counsel, at the time duly excepted and still except.

Thereupon the appellants in open court prayed an appeal to the Supreme Court of the United States, which is hereby allowed.

December 7, 1898.

214 And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause a petition for appeal in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER Ames, Second, Trustees; United States of America, Union Pacific Railway; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, Receivers, *et al.*, Appellees.	No. 996	Petition for Appeal.

To the honorable circuit court of appeals for the eighth circuit:

Your petitioners, Credits Commutation Company and Combination Bridge Company, appellants, each for itself would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court of appeals for the eighth circuit,

there was entered at the December term, 1898, under date December 7, 1898, in said court, a final order or decree greatly to the prejudice of your petitioners; which said order or decree is erroneous and inequitable in many respects.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners severally and each for itself prays that it may be allowed an appeal in this cause to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the Supreme Court of the United States, and that proper orders touching security required of them may be made.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS AND
HENRY J. TAYLOR,
Their Solicitors and Counsel.

Endorsed: No. 996. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Petition for appeal. Filed Feb. 20, 1899. John D. Jordan, clerk.

215

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause an assignment of errors in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE COMBINATION Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; United States of America, Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John Doane, Receivers, *et al.*, Appellees.	No. 996.

Assignment of Errors on Appeal Severally in Behalf of the Credits Commutation Company and the Combination Bridge Company.

On the 20th day of February, A. D. 1899, come the undersigned, Credits Commutation Company and Combination Bridge Company, appellants, by John C. Coombs and Henry J. Taylor, their solicitors and counsel, and each severally and separately for itself says that the order or decree entered in said cause in the circuit court of the United States for the district of Nebraska is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

1. Because the court erred in denying the petitions of said Credits Commutation Company and said Combination Bridge Company for leave to intervene herein.

2. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

216 3. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

4. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

5. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

6. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

And further severally and separately each for itself says that the decree or order in said cause made and entered on the 7th day of December, 1898, in said United States circuit court of appeals for the eighth circuit is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

7. Because the court erred in denying the petition of said Credits Commutation Company and said Combination Bridge Company for leave to intervene herein.

8. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

9. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

10. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

11. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

12. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

13. Because the court erred in its final order and decree herein under date of December 7, 1898, in sustaining appellees' motions to dismiss the appeal from the circuit court of the United States for the district of Nebraska, and in dismissing said appeal.

217 Wherefore these appellants severally pray, each for itself, that the said decree or order of said circuit court and that the said decree or order of the said United States circuit court of appeals be reversed, and that the said courts be ordered to enter a decree or order in accordance with the prayers of the respective pleadings of these appellants.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Their Solicitors and Counsel.

Endorsed: No. 996. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and the Combination Bridge Company, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Assignment of errors on appeal severally in behalf of the Credits Commutation Company and the Combination Bridge Company. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals an appeal bond in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY *et al.*, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; United States of America, Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John Doane, Receivers, *et al.*, Appellees.	No. 996. Appeal Bond.

Know all men by these presents that we, the Credits Commutation Company and Combination Bridge Company, principals,
218 and F. L. Eaton and Henry J. Taylor, sureties, are held and firmly bound unto F. Gordon Dexter and Oliver Ames, Second, trustees; United States of America, — Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, John Doane, receivers, *et al.*, called herein the appellees, in the full and just sum of one thousand dollars ($1,000), to be paid to the said appellees, their successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of February, in the year of our Lord eighteen hundred and ninety-nine.

Whereas lately, at the December term, 1898, of the United States circuit court of appeals for the eighth circuit, in a suit depending in the said circuit court of appeals between the said appellees and the said Credits Commutation Company and Combination Bridge Company, a decree or order was rendered against the said Credits Commutation Company and Combination Bridge Company, and the said named appellants having obtained a writ of appeal and filed a copy thereof in the clerk's office of the said court to reverse said order or decree in the aforesaid suit, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, the third Monday of March next:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their appeal to effect and answer all costs if they fail to make good their plea, then the above obligation, which

is only a bond for costs and not a supersedeas bond, to be void; else to remain in full force and virtue.

CREDITS COMMUTATION COMPANY,
By F. L. EATON, *Sec'y.*
COMBINATION BRIDGE COMPANY,
By F. L. EATON, *Sec'y.*
F. L. EATON. [L. S.]
HENRY J. TAYLOR. [L. S.]

Sealed and delivered in the presence of—

——— ———.

219 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, Western Division, }

F. L. Eaton and Henry J. Taylor, being duly sworn, depose and say and each for himself saith that he is worth one thousand dollars over and above all just debts, liabilities, and exemptions.

F. L. EATON.
HENRY J. TAYLOR.

Sworn to this 16th day of February, 1899, before me—

[SEAL.] E. A. BURGESS,
Notary Public within and for Woodbury County, State of Iowa.

The above bond and the sureties thereto approved this 20th day of February, 1899.

AMOS M. THAYER,
HENRY C. CALDWELL,
Circuit Judges.

Endorsed: No. 996. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and Combination Bridge Company, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Appeal bond. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, in the record of the proceedings of said circuit court of appeals is an order allowing appeal in said cause in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

MONDAY, *February* 20, 1899.

CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; United States of America, Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, Receivers, *et al.*, Appellees.	No. 996. Allowance of Appeal.

And now, on this 20th day of February, 1899, the above cause came on upon the hearing of the petitions of the Credits Commutation Company and the Combination Bridge Company for the allowance of appeals herein from the order or decree entered herein
220 at the December term, 1898, under date December 7, 1898, and now, in open court, at the same term thereof at which said order or decree complained of was so entered and rendered by this court, said appeals are hereby allowed and security for costs fixed at one thousand dollars ($1,000), and the bond therefor now on file is approved.

(Signed) HENRY C. CALDWELL,
AMOS M. THAYER,
Circuit Judges.

And on the fifteenth day of March, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause a citation, the original of which, with proof of service thereon, is hereto attached and herewith returned:

221 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE Combination Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; United States of America, Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John Doane, Receivers, *et al.*, Appellees.	No. 996. Citation.

The United States of America to said appellees:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of March next, pursuant to a writ of appeal filed in

the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein The Credits Commutation Company and Combination Bridge Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against said appellants herein and in the circuit court of — United States for the district of Nebraska should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the United States circuit court of appeals for the eighth circuit, this 20th day of February, 1899.

HENRY C. CALDWELL,
Circuit Judge.

222 STATE OF NEW YORK, } ss:
County and City of New York, }

I served the hereto-annexed citation on Winslow S. Pierce by handing a copy of the same to him at number 120 Broadway, in the city of New York, State of New York.

BERT HANSON.

Subscribed and sworn to before me and in my presence this 9th day of March, 1899.

[Seal of Morris I. Price, Notary Public, New York County.]

MORRIS I. PRICE,
Notary Public in and for the City, County, and State of New York.

For service of citation on the United States, see admission of service by special counsel attached to the citation in the case of Credits Commutation Company *et al.*, appellants, *vs.* United States of America *et al.*

223 STATE OF NEBRASKA, } ss:
County of Douglas, }

I served the hereto-annexed citation on William R. Kelly by handing a true copy of the same to him, at the city of Omaha, in the State of Nebraska, on the 14th day of March, 1899.

E. A. BURGESS.

Subscribed and sworn to before me and in my presence this 14th day of March, 1899.

{ Notarial Seal of Francis J. Mieding, Douglas County, Nebraska. Commission Expires 4, 23, 1901. }

FRANCIS J. MIEDING,
Notary Public within and for Douglas County, Nebraska.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

I served the hereto annexed citation on G. M. Lambertson by handing a true copy of the same to him, at the city of Lincoln, in the State of Nebraska, on the 13th day of March, 1899.

E. A. BURGESS.

Subscribed and sworn to before me and in my presence this 13th day of March, 1899.

{ Notarial Seal of Emma L. Frow, Lancaster County, Nebraska. Commission Expires May 21, 1900. }

EMMA L. FROW,
Notary Public within and for Lancaster County, Nebraska.

[Endorsed:] No. 996. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and Combination Bridge Company, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Citation. Filed Mar. 15, 1899. John D. Jordan, clerk.

224 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing two hundred and twenty-three pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of The Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* F. Gordon Dexter and Oliver Ames, Second, trustees, *et al.*, appellees, No. 996, December term, 1898, as fully as the same remain on file and of record in my office.

I further certify that the original citation, with proof of service thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this fifteenth day of March, A. D. 1899.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

{ Ten-cent U. S. internal-revenue stamp, canceled Mar. 15, 1899. John D. Jordan. }

Endorsed on cover: Case No. 17,327. U. S. C. C. of appeals, 8th circuit. Term No., 234. The Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* F. Gordon Dexter and Oliver Ames, Second, trustees, *et al.* Filed March 18th, 1899.